

Amendment No. 2420

S. 1415

AMENDMENT NO. **2420**

Calendar No. **370**

Purpose: Modification of the Commerce Committee amendment.

IN THE SENATE OF THE UNITED STATES—105th Cong., 2d Sess.

S. 1415

May 18, 1998

() Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LOTT for Mr. MCCAIN

Viz: Strike out all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “National Tobacco Policy and Youth Smoking Reduction
4 Act”.

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.
- Sec. 3. Purpose.
- Sec. 4. Scope and effect.
- Sec. 5. Relationship to other, related Federal, State, local, and Tribal laws.
- Sec. 6. Definitions.
- Sec. 7. Notification if youthful cigarette smoking restrictions increase youthful pipe and cigar smoking.
- Sec. 8. FTC jurisdiction not affected.
- Sec. 9. Congressional review provisions.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

- Sec. 101. Amendment of Federal Food, Drug, and Cosmetic Act of 1938.
- Sec. 102. Conforming and other amendments to general provisions.
- Sec. 103. Construction of current regulations.

TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

Subtitle A—Underage Use

- Sec. 201. Findings.
- Sec. 202. Purpose.
- Sec. 203. Goals for reducing underage tobacco use.
- Sec. 204. Look-back assessment.
- Sec. 205. Definitions.

Subtitle B—State Retail Licensing and Enforcement Incentives

- Sec. 231. State retail licensing and enforcement block grants.
- Sec. 232. Block grants for compliance bonuses.
- Sec. 233. Conforming change.

Subtitle C—Tobacco Use Prevention and Cessation Initiatives

- Sec. 261. Tobacco use prevention and cessation initiatives.

TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE
CONSTITUENT DISCLOSURE

Subtitle A—Product Warnings, Labeling and Packaging

- Sec. 301. Cigarette label and advertising warnings.
- Sec. 302. Authority to revise cigarette warning label Statements.
- Sec. 303. Smokeless tobacco labels and advertising warnings.
- Sec. 304. Authority to revise smokeless tobacco product warning label statements.
- Sec. 305. Tar, nicotine, and other smoke constituent disclosure to the public.

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

- Sec. 311. Regulation requirement.

TITLE IV—NATIONAL TOBACCO TRUST FUND

- Sec. 401. Establishment of trust fund.
- Sec. 402. Payments by industry.
- Sec. 403. Adjustments.
- Sec. 404. Payments to be passed through to consumers.
- Sec. 405. Tax treatment of payments.
- Sec. 406. Enforcement for nonpayment.

Subtitle B—General Spending Provisions

- Sec. 451. Allocation accounts.
- Sec. 452. Grants to States.
- Sec. 453. Indian health service.
- Sec. 454. Research at the National Science Foundation.
- Sec. 455. Medicare cancer patient demonstration project; evaluation and report to Congress.

TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO
TOBACCO SMOKE

- Sec. 501. Definitions.
- Sec. 502. Smoke-free environment policy.

- Sec. 503. Citizen actions.
- Sec. 504. Preemption.
- Sec. 505. Regulations.
- Sec. 506. Effective date.
- Sec. 507. State choice.

TITLE VI—APPLICATION TO INDIAN TRIBES

- Sec. 601. Short title.
- Sec. 602. Findings and purposes.
- Sec. 603. Application of title to Indian lands and to Native Americans.

TITLE VII—TOBACCO CLAIMS

- Sec. 701. Definitions.
- Sec. 702. Application; preemption.
- Sec. 703. Rules governing tobacco claims.

TITLE VIII—TOBACCO INDUSTRY ACCOUNTABILITY REQUIREMENTS AND EMPLOYEE PROTECTION FROM REPRISALS

- Sec. 801. Accountability requirements and oversight of the tobacco industry.
- Sec. 802. Tobacco product manufacturer employee protection.

TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY DOCUMENTS

- Sec. 901. Findings.
- Sec. 902. Applicability.
- Sec. 903. Document disclosure.
- Sec. 904. Document review.
- Sec. 905. Resolution of disputed privilege and trade secret claims.
- Sec. 906. Appeal of panel decision.
- Sec. 907. Miscellaneous.
- Sec. 908. Penalties.
- Sec. 909. Definitions.

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

- Sec. 1001. Short title.
- Sec. 1002. Definitions.

Subtitle A—Tobacco Community Revitalization

- Sec. 1011. Authorization of appropriations.
- Sec. 1012. Expenditures.
- Sec. 1013. Budgetary treatment.

Subtitle B—Tobacco Market Transition Assistance

- Sec. 1021. Payments for lost tobacco quota.
- Sec. 1022. Industry payments for all department costs associated with tobacco production.
- Sec. 1023. Tobacco community economic development grants.
- Sec. 1024. Flue-cured tobacco production permits.
- Sec. 1025. Modifications in Federal tobacco programs.

Subtitle C—Farmer and Worker Transition Assistance

- Sec. 1031. Tobacco worker transition program.
- Sec. 1032. Farmer opportunity grants.

Subtitle D—Immunity

- Sec. 1041. General immunity for tobacco producers and tobacco warehouse owners.

TITLE XI—MISCELLANEOUS PROVISIONS

Subtitle A—International Provisions

- Sec. 1101. Policy.
- Sec. 1102. Tobacco control negotiations.
- Sec. 1103. Report to Congress.
- Sec. 1104. Funding.
- Sec. 1105. Prohibition of funds to facilitate the exportation or promotion of tobacco.
- Sec. 1106. Health labeling of tobacco products for export.
- Sec. 1107. International tobacco control awareness.

Subtitle B—Anti-smuggling Provisions

- Sec. 1131. Definitions.
- Sec. 1132. Tobacco product labeling requirements.
- Sec. 1133. Tobacco product licenses.
- Sec. 1134. Prohibitions.
- Sec. 1135. Labeling of products sold by Native Americans.
- Sec. 1136. Limitation on activities involving tobacco products in foreign trade zones.
- Sec. 1137. Jurisdiction; penalties; compromise of liability.
- Sec. 1138. Amendments to the Contraband Cigarette Trafficking Act.
- Sec. 1139. Funding.
- Sec. 1140. Rules and regulations.

Subtitle C—Other Provisions

- Sec. 1161. Improving child care and early childhood development.
- Sec. 1162. Ban of sale of tobacco products through the use of vending machines.
- Sec. 1163. Amendments to the Employee Retirement Income Security Act of 1974.

TITLE XII—ASBESTOS-RELATED TOBACCO CLAIMS

- Sec. 1201. National tobacco trust funds available under future legislation.

TITLE XIII—VETERANS' BENEFITS

- Sec. 1301. Recovery by Secretary of Veterans' Affairs.

TITLE XIV—EXCHANGE OF BENEFITS FOR AGREEMENT

- Sec. 1401. Conferral of benefits on participating tobacco product manufacturers in return for their assumption of specific obligations.
- Sec. 1402. Participating tobacco product manufacturer.
- Sec. 1403. General provisions of protocol.
- Sec. 1404. Tobacco product labeling and advertising requirements of protocol.
- Sec. 1405. Point-of-sale requirements.

- Sec. 1406. Application of title.
- Sec. 1407. Governmental claims.
- Sec. 1408. Addiction and dependency claims; Castano Civil Actions.
- Sec. 1409. Substantial non-attainment of required reductions.
- Sec. 1410. Public health emergency.
- Sec. 1411. Tobacco claims brought against participating tobacco product manufacturers.
- Sec. 1412. Payment of tobacco claim settlements and judgments.
- Sec. 1413. Attorneys' fees and expenses.
- Sec. 1414. Effect of court decisions.
- Sec. 1415. Criminal laws not affected.
- Sec. 1416. Congress reserves the right to enact laws in the future.
- Sec. 1417. Definitions.

TITLE XV—TOBACCO TRANSITION

- Sec. 1501. Short title.
- Sec. 1502. Purposes.
- Sec. 1503. Definitions.

Subtitle A—Tobacco Production Transition

Chapter 1—Tobacco Transition Contracts

- Sec. 1511. Tobacco community revitalization trust fund.
- Sec. 1512. Offer and terms of tobacco transition contracts.
- Sec. 1513. Elements of contracts.
- Sec. 1514. Buyout payments to owners.
- Sec. 1515. Transition payments to producers.

Chapter 2—Rural Economic Assistance Block Grants

- Sec. 1521. Rural economic assistance block grants.

Subtitle B—Tobacco Price Support and Production Adjustment Programs

Chapter 1—Tobacco Price Support Program

- Sec. 1531. Interim reform of tobacco price support program.
- Sec. 1532. Termination of tobacco price support program.

Chapter 2—Tobacco Production Adjustment Programs

- Sec. 1541. Termination of tobacco production adjustment programs.

Subtitle C—Funding

- Sec. 1551. Trust fund.
- Sec. 1552. Tobacco related administrative costs and subsidies.
- Sec. 1553. Commodity credit corporation.

Subtitle D—Miscellaneous

- Sec. 1561. Liability for obligations of tobacco product manufacturers.
- Sec. 1562. FDA regulation of tobacco production and farms.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The use of tobacco products by the Nation's
4 children is a pediatric disease of epic and worsening
5 proportions that results in new generations of to-
6 bacco-dependent children and adults.

7 (2) A consensus exists within the scientific and
8 medical communities that tobacco products are in-
9 herently dangerous and cause cancer, heart disease,
10 and other serious adverse health effects.

11 (3) Nicotine is an addictive drug.

12 (4) Virtually all new users of tobacco products
13 are under the minimum legal age to purchase such
14 products.

15 (5) Tobacco advertising and marketing contrib-
16 ute significantly to the use of nicotine-containing to-
17 bacco products by adolescents.

18 (6) Because past efforts to restrict advertising
19 and marketing of tobacco products have failed ade-
20 quately to curb tobacco use by adolescents, com-
21 prehensive restrictions on the sale, promotion, and
22 distribution of such products are needed.

23 (7) Federal and State governments have lacked
24 the legal and regulatory authority and resources
25 they need to address comprehensively the public

1 health and societal problems caused by the use of to-
2 bacco products.

3 (8) Federal and State public health officials,
4 the public health community, and the public at large
5 recognize that the tobacco industry should be subject
6 to ongoing oversight.

7 (9) Under Article I, Section 8 of the Constitu-
8 tion, the Congress is vested with the responsibility
9 for regulating interstate commerce and commerce
10 with Indian tribes.

11 (10) The sale, distribution, marketing, advertis-
12 ing, and use of tobacco products are activities in and
13 substantially affecting interstate commerce because
14 they are sold, marketed, advertised, and distributed
15 in interstate commerce on a nationwide basis, and
16 have a substantial effect on the Nation's economy.

17 (11) The sale, distribution, marketing, advertis-
18 ing, and use of such products substantially affect
19 interstate commerce through the health care and
20 other costs attributable to the use of tobacco prod-
21 ucts.

22 (12) The citizens of the several States are ex-
23 posed to, and adversely affected by, environmental
24 smoke in public buildings and other facilities which
25 imposes a burden on interstate commerce.

1 (13) Civil actions against tobacco product man-
2 ufacturers and others are pending in Federal and
3 State courts arising from the use, marketing, and
4 sale of tobacco products. Among these actions are
5 cases brought by the attorneys general of more than
6 40 States, certain cities and counties, and the Com-
7 monwealth of Puerto Rico, and other parties, includ-
8 ing Indian tribes, and class actions brought by pri-
9 vate claimants (such as in the Castano Civil Ac-
10 tions), seeking to recover monies expended to treat
11 tobacco-related diseases and for the protection of mi-
12 nors and consumers, as well as penalties and other
13 relief for violations of antitrust, health, consumer
14 protection, and other laws.

15 (14) Civil actions have been filed throughout
16 the United States against tobacco product manufac-
17 turers and their distributors, trade associations, law
18 firms, and consultants on behalf of individuals or
19 classes of individuals claiming to be dependent upon
20 and injured by tobacco products.

21 (15) These civil actions are complex, time-con-
22 suming, expensive, and burdensome for both the liti-
23 gants and Federal and State courts. To date, these
24 civil actions have not resulted in sufficient redress
25 for smokers or non-governmental third-party payers.

1 To the extent that governmental entities have been
2 or may in the future be compensated for tobacco-re-
3 lated claims they have brought, it is not now possible
4 to identify what portions of such past or future re-
5 coveries can be attributed to their various antitrust,
6 health, consumer protection, or other causes of ac-
7 tion.

8 (16) It is in the public interest for Congress to
9 adopt comprehensive public health legislation be-
10 cause of tobacco's unique position in the Nation's
11 history and economy; the need to prevent the sale,
12 distribution, marketing and advertising of tobacco
13 products to persons under the minimum legal age to
14 purchase such products; and the need to educate the
15 public, especially young people, regarding the health
16 effects of using tobacco products.

17 (17) The public interest requires a timely, fair,
18 equitable, and consistent result that will serve the
19 public interest by (A) providing that a portion of the
20 costs of treatment for diseases and adverse health
21 effects associated with the use of tobacco products
22 is borne by the manufacturers of these products, and
23 (B) restricting throughout the Nation the sale, dis-
24 tribution, marketing, and advertising of tobacco

1 products only to persons of legal age to purchase
2 such products.

3 (18) Public health authorities estimate that the
4 benefits to the Nation of enacting Federal legislation
5 to accomplish these goals would be significant in
6 human and economic terms.

7 (19) Reducing the use of tobacco by minors by
8 50 percent would prevent well over 60,000 early
9 deaths each year and save up to \$43 billion each
10 year in reduced medical costs, improved productivity,
11 and the avoidance of premature deaths.

12 (20) Advertising, marketing, and promotion of
13 tobacco products have been especially directed to at-
14 tract young persons to use tobacco products and
15 these efforts have resulted in increased use of such
16 products by youth. Past efforts to oversee these ac-
17 tivities have not been successful in adequately pre-
18 venting such increased use.

19 (21) In 1995, the tobacco industry spent close
20 to \$4,900,000,000 to attract new users, retain cur-
21 rent users, increase current consumption, and gen-
22 erate favorable long-term attitudes toward smoking
23 and tobacco use.

1 (22) Tobacco product advertising often
2 misleadingly portrays the use of tobacco as socially
3 acceptable and healthful to minors.

4 (23) Tobacco product advertising is regularly
5 seen by persons under the age of 18, and persons
6 under the age of 18 are regularly exposed to tobacco
7 product promotional efforts.

8 (24) Through advertisements during and spon-
9 sorship of sporting events, tobacco has become
10 strongly associated with sports and has become por-
11 trayed as an integral part of sports and the healthy
12 lifestyle associated with rigorous sporting activity.

13 (25) Children are exposed to substantial and
14 unavoidable tobacco advertising that leads to favor-
15 able beliefs about tobacco use, plays a role in leading
16 young people to overestimate the prevalence of to-
17 bacco use, and increases the number of young people
18 who begin to use tobacco.

19 (26) Tobacco advertising increases the size of
20 the tobacco market by increasing consumption of to-
21 bacco products including increasing tobacco use by
22 young people.

23 (27) Children are more influenced by tobacco
24 advertising than adults, they smoke the most adver-
25 tised brands, and children as young as 3 to 6 years

1 old can recognize a character associated with smok-
2 ing at the same rate as they recognize cartoons and
3 fast food characters.

4 (28) Tobacco company documents indicate that
5 young people are an important and often crucial seg-
6 ment of the tobacco market.

7 (29) Comprehensive advertising restrictions will
8 have a positive effect on the smoking rates of young
9 people.

10 (30) Restrictions on advertising are necessary
11 to prevent unrestricted tobacco advertising from un-
12 dermining legislation prohibiting access to young
13 people and providing for education about tobacco
14 use.

15 (31) International experience shows that adver-
16 tising regulations that are stringent and comprehen-
17 sive have a greater impact on overall tobacco use
18 and young people's use than weaker or less com-
19 prehensive ones. Text-only requirements, while not
20 as stringent as a ban, will help reduce underage use
21 of tobacco products while preserving the informa-
22 tional function of advertising.

23 (32) It is in the public interest for Congress to
24 adopt legislation to address the public health crisis
25 created by actions of the tobacco industry.

1 (33) If, as a direct or indirect result of this Act,
2 the consumption of tobacco products in the United
3 States is reduced significantly, then tobacco farmers,
4 their families, and their communities may suffer eco-
5 nomic hardship and displacement, notwithstanding
6 their lack of involvement in the manufacturing and
7 marketing of tobacco products.

8 (34) The use of tobacco products in motion pic-
9 tures and other mass media glamorizes its use for
10 young people and encourages them to use tobacco
11 products.

12 **SEC. 3. PURPOSE.**

13 The purposes of this Act are—

14 (1) to clarify the authority of the Food and
15 Drug Administration to regulate tobacco products
16 under the Federal Food, Drug, and Cosmetic Act
17 (21 U.S.C. 301 et seq.), by recognizing it as the pri-
18 mary Federal regulatory authority with respect to
19 the manufacture, marketing, and distribution of to-
20 bacco products;

21 (2) to require the tobacco industry to fund both
22 Federal and State oversight of the tobacco industry
23 from on-going payments by tobacco product manu-
24 facturers;

1 (3) to require tobacco product manufacturers to
2 provide ongoing funding to be used for an aggressive
3 Federal, State, and local enforcement program and
4 for a nationwide licensing system to prevent minors
5 from obtaining tobacco products and to prevent the
6 unlawful distribution of tobacco products, while ex-
7 pressly permitting the States to adopt additional
8 measures that further restrict or eliminate the prod-
9 ucts' use;

10 (4) to ensure that the Food and Drug Adminis-
11 tration and the States may continue to address
12 issues of particular concern to public health officials,
13 especially the use of tobacco by young people and de-
14 pendence on tobacco;

15 (5) to impose financial surcharges on tobacco
16 product manufacturers if tobacco use by young peo-
17 ple does not substantially decline;

18 (6) to authorize appropriate agencies of the
19 Federal government to set national standards con-
20 trolling the manufacture of tobacco products and the
21 identity, public disclosure, and amount of ingredi-
22 ents used in such products;

23 (7) to provide new and flexible enforcement au-
24 thority to ensure that the tobacco industry makes ef-

1 forts to develop and introduce less harmful tobacco
2 products;

3 (8) to confirm the Food and Drug Administra-
4 tion's authority to regulate the levels of tar, nicotine,
5 and other harmful components of tobacco products;

6 (9) in order to ensure that adults are better in-
7 formed, to require tobacco product manufacturers to
8 disclose research which has not previously been
9 made available, as well as research generated in the
10 future, relating to the health and dependency effects
11 or safety of tobacco products;

12 (10) to impose on tobacco product manufactur-
13 ers the obligation to provide funding for a variety of
14 public health initiatives;

15 (11) to establish a minimum Federal standard
16 for stringent restrictions on smoking in public
17 places, while also to permit State, Tribal, and local
18 governments to enact additional and more stringent
19 standards or elect not to be covered by the Federal
20 standard if that State's standard is as protective, or
21 more protective, of the public health;

22 (12) to authorize and fund from payments by
23 tobacco product manufacturers a continuing national
24 counter-advertising and tobacco control campaign
25 which seeks to educate consumers and discourage

1 children and adolescents from beginning to use to-
2 bacco products, and which encourages current users
3 of tobacco products to discontinue using such prod-
4 ucts;

5 (13) to establish a mechanism to compensate
6 the States in settlement of their various claims
7 against tobacco product manufacturers;

8 (14) to authorize and to fund from payments by
9 tobacco product manufacturers a nationwide pro-
10 gram of smoking cessation administered through
11 State and Tribal governments and the private sec-
12 tor;

13 (15) to establish and fund from payments by
14 tobacco product manufacturers a National Tobacco
15 Fund;

16 (16) to affirm the rights of individuals to access
17 to the courts, to civil trial by jury, and to damages
18 to compensate them for harm caused by tobacco
19 products;

20 (17) to continue to permit the sale of tobacco
21 products to adults in conjunction with measures to
22 ensure that they are not sold or accessible to under-
23 age purchasers;

24 (18) to impose appropriate regulatory controls
25 on the tobacco industry; and

1 (19) to protect tobacco farmers and their com-
2 munities from the economic impact of this Act by
3 providing full funding for and the continuation of
4 the Federal tobacco program and by providing funds
5 for farmers and communities to develop new oppor-
6 tunities in tobacco-dependent communities.

7 **SEC. 4. SCOPE AND EFFECT.**

8 (a) INTENDED EFFECT.—This Act is not intended
9 to—

10 (1) establish a precedent with regard to any
11 other industry, situation, circumstance, or legal ac-
12 tion; or

13 (2) except as provided in this Act, affect any
14 action pending in State, Tribal, or Federal court, or
15 any agreement, consent decree, or contract of any
16 kind.

17 (b) TAXATION.—Notwithstanding any other provision
18 of law, this Act and the amendments made by this Act
19 shall not affect any authority of the Secretary of the
20 Treasury (including any authority assigned to the Bureau
21 of Alcohol, Tobacco and Firearms) or of State or local gov-
22 ernments with regard to taxation for tobacco or tobacco
23 products.

24 (c) AGRICULTURAL ACTIVITIES.—The provisions of
25 this Act which authorize the Secretary to take certain ac-

1 tions with regard to tobacco and tobacco products shall
2 not be construed to affect any authority of the Secretary
3 of Agriculture under existing law regarding the growing,
4 cultivation, or curing of raw tobacco.

5 **SEC. 5. RELATIONSHIP TO OTHER, RELATED FEDERAL,**
6 **STATE, LOCAL, AND TRIBAL LAWS.**

7 (a) AGE RESTRICTIONS.—Nothing in this Act or the
8 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301
9 et seq.), as amended by this Act, shall prevent a Federal
10 agency (including the Armed Forces), a State or its politi-
11 cal subdivisions, or the government of an Indian tribe from
12 adopting and enforcing additional measures that further
13 restrict or prohibit tobacco product sale to, use by, and
14 accessibility to persons under the legal age of purchase
15 established by such agency, State, subdivision, or govern-
16 ment of an Indian tribe.

17 (b) ADDITIONAL MEASURES.—Except as otherwise
18 expressly provided in this Act, nothing in this Act, the
19 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301
20 et seq.), or rules promulgated under such Acts, shall limit
21 the authority of a Federal agency (including the Armed
22 Forces), a State or its political subdivisions, or the govern-
23 ment of an Indian tribe to enact, adopt, promulgate, and
24 enforce any law, rule, regulation, or other measure with
25 respect to tobacco products, including laws, rules, regula-

1 tions, or other measures relating to or prohibiting the sale,
 2 distribution, possession, exposure to, or use of tobacco
 3 products by persons of any age that are in addition to
 4 the provisions of this Act and the amendments made by
 5 this Act. No provision of this Act or amendment made
 6 by this Act shall limit or otherwise affect any State, Trib-
 7 al, or local taxation of tobacco products.

8 (c) NO LESS STRINGENT.—Nothing in this Act or
 9 the amendments made by this Act is intended to supersede
 10 any State, local, or Tribal law that is not less stringent
 11 than this Act, or other Acts as amended by this Act.

12 (d) STATE LAW NOT AFFECTED.—Except as other-
 13 wise expressly provided in this Act, nothing in this Act,
 14 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301
 15 et seq.), or rules promulgated under such Acts, shall su-
 16 percede the authority of the States, pursuant to State law,
 17 to expend funds provided by this Act.

18 **SEC. 6. DEFINITIONS.**

19 In this Act:

20 (1) BRAND.—The term “brand” means a vari-
 21 ety of tobacco product distinguished by the tobacco
 22 used, tar content, nicotine content, flavoring used,
 23 size, filtration, or packaging, logo, registered trade-
 24 mark or brand name, identifiable pattern of colors,
 25 or any combination of such attributes.

1 (2) CIGARETTE.—The term “cigarette” has the
2 meaning given that term by section 3(1) of the Fed-
3 eral Cigarette Labeling and Advertising Act (15
4 U.S.C. 1332(1)), but also includes tobacco, in any
5 form, that is functional in the product, which, be-
6 cause of its appearance, the type of tobacco used in
7 the filler, or its packaging and labeling, is likely to
8 be offered to, or purchased by, consumers as a ciga-
9 rette or as roll-your-own tobacco.

10 (3) CIGARETTE TOBACCO.—The term “cigarette
11 tobacco” means any product that consists of loose
12 tobacco that is intended for use by consumers in a
13 cigarette. Unless otherwise stated, the requirements
14 for cigarettes shall also apply to cigarette tobacco.

15 (4) COMMERCE.—The term “commerce” has
16 the meaning given that term by section 3(2) of the
17 Federal Cigarette Labeling and Advertising Act (15
18 U.S.C. 1332(2)).

19 (5) DISTRIBUTOR.—The term “distributor” as
20 regards a tobacco product means any person who
21 furthers the distribution of cigarette or smokeless to-
22 bacco, whether domestic or imported, at any point
23 from the original place of manufacture to the person
24 who sells or distributes the product to individuals for

1 personal consumption. Common carriers are not con-
2 sidered distributors for purposes of this Act.

3 (6) INDIAN COUNTRY; INDIAN LANDS.—The
4 terms “Indian country” and “Indian lands” have the
5 meaning given the term “Indian country” by section
6 1151 of title 18, United States Code, and includes
7 lands owned by an Indian tribe or a member thereof
8 over which the United States exercises jurisdiction
9 on behalf of the tribe or tribal member.

10 (7) INDIAN TRIBE.—The term “Indian tribe”
11 has the meaning given such term in section 4(e) of
12 the Indian Self Determination and Education Assist-
13 ance Act (25 U.S.C. 450b(e)).

14 (8) LITTLE CIGAR.—The term “little cigar” has
15 the meaning given that term by section 3(7) of the
16 Federal Cigarette Labeling and Advertising Act (15
17 U.S.C. 1332(7)).

18 (9) NICOTINE.—The term “nicotine” means the
19 chemical substance named 3-(1-Methyl-2-
20 pyrrolidinyl) pyridine or C[10]H[14]N[2], including
21 any salt or complex of nicotine.

22 (10) PACKAGE.—The term “package” means a
23 pack, box, carton, or container of any kind or, if no
24 other container, any wrapping (including cello-
25 phane), in which cigarettes or smokeless tobacco are

1 offered for sale, sold, or otherwise distributed to con-
2 sumers.

3 (11) POINT-OF-SALE.—The term “point-of-
4 sale” means any location at which a consumer can
5 purchase or otherwise obtain cigarettes or smokeless
6 tobacco for personal consumption.

7 (12) RETAILER.—The term “retailer” means
8 any person who sells cigarettes or smokeless tobacco
9 to individuals for personal consumption, or who op-
10 erates a facility where self-service displays of tobacco
11 products are permitted.

12 (13) ROLL-YOUR-OWN TOBACCO.—The term
13 “roll-your-own tobacco” means any tobacco which,
14 because of its appearance, type, packaging, or label-
15 ing, is suitable for use and likely to be offered to,
16 or purchased by, consumers as tobacco for making
17 cigarettes.

18 (14) SECRETARY.—Except in title VII and
19 where the context otherwise requires, the term “Sec-
20 retary” means the Secretary of Health and Human
21 Services.

22 (15) SMOKELESS TOBACCO.—The term “smoke-
23 less tobacco” means any product that consists of
24 cut, ground, powdered, or leaf tobacco and that is
25 intended to be placed in the oral or nasal cavity.

1 (16) STATE.—The term “State” means any
2 State of the United States and, for purposes of this
3 Act, includes the District of Columbia, the Common-
4 wealth of Puerto Rico, Guam, the Virgin Islands,
5 American Samoa, Wake Island, Midway Islands,
6 Kingman Reef, Johnston Atoll, the Northern Mari-
7 ana Islands, and any other trust territory or posses-
8 sion of the United States.

9 (17) TOBACCO PRODUCT.—The term “tobacco
10 product” means cigarettes, cigarette tobacco, smoke-
11 less tobacco, little cigars, roll-your-own tobacco, and
12 fine cut products.

13 (18) TOBACCO PRODUCT MANUFACTURER.—Ex-
14 cept in titles VII, X, and XIV, the term “tobacco
15 product manufacturer” means any person, including
16 any repacker or relabeler, who—

17 (A) manufactures, fabricates, assembles,
18 processes, or labels a finished cigarette or
19 smokeless tobacco product; or

20 (B) imports a finished cigarette or smoke-
21 less tobacco product for sale or distribution in
22 the United States.

23 (19) UNITED STATES.—The term “United
24 States” means the 50 States of the United States of
25 America and the District of Columbia, the Common-

1 wealth of Puerto Rico, Guam, the Virgin Islands,
2 American Samoa, Wake Island, Midway Islands,
3 Kingman Reef, Johnston Atoll, the Northern Mari-
4 ana Islands, and any other trust territory or posses-
5 sion of the United States.

6 **SEC. 7. NOTIFICATION IF YOUTHFUL CIGARETTE SMOKING**
7 **RESTRICTIONS INCREASE YOUTHFUL PIPE**
8 **AND CIGAR SMOKING.**

9 The Secretary shall notify the Congress if the Sec-
10 retary determines that underage use of pipe tobacco and
11 cigars is increasing.

12 **SEC. 8. FTC JURISDICTION NOT AFFECTED.**

13 (a) IN GENERAL.—Except where expressly provided
14 in this Act, nothing in this Act shall be construed as limit-
15 ing or diminishing the authority of the Federal Trade
16 Commission to enforce the laws under its jurisdiction with
17 respect to the advertising, sale, or distribution of tobacco
18 products.

19 (b) ENFORCEMENT BY FTC.—Any advertising that
20 violates this Act or part 897 of title 21, Code of Federal
21 Regulations, is an unfair or deceptive act or practice under
22 section 5(a) of the Federal Trade Commission Act (15
23 U.S.C. 45(a)) and shall be considered a violation of a rule
24 promulgated under section 18 of that Act (15 U.S.C. 57a).

1 **SEC. 9. CONGRESSIONAL REVIEW PROVISIONS.**

2 In accordance with section 801 of title 5, United
3 States Code, the Congress shall review, and may dis-
4 approve, any rule under this Act that is subject to section
5 801. This section does not apply to the rule set forth in
6 part 897 of title 21, Code of Federal Regulations.

7 **TITLE I—REGULATION OF THE**
8 **TOBACCO INDUSTRY**

9 **SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND**
10 **COSMETIC ACT OF 1938.**

11 (a) DEFINITION OF TOBACCO PRODUCTS.—Section
12 201 of the Federal Food, Drug, and Cosmetic Act (21
13 U.S.C. 321) is amended by adding at the end the follow-
14 ing:

15 “(kk) The term ‘tobacco product’ means any
16 product made or derived from tobacco that is in-
17 tended for human consumption, including any com-
18 ponent, part, or accessory of a tobacco product (ex-
19 cept for raw materials other than tobacco used in
20 manufacturing a component, part, or accessory of a
21 tobacco product).”.

22 (b) FDA AUTHORITY OVER TOBACCO PRODUCTS.—
23 The Federal Food, Drug, and Cosmetic Act (21 U.S.C.
24 301 et seq.) is amended—

25 (1) by redesignating chapter IX as chapter X;

1 (2) by redesignating sections 901 through 907
 2 as sections 1001 through 1007; and

3 (3) by inserting after section 803 the following:

4 **“CHAPTER IX—TOBACCO**
 5 **PRODUCTS**

6 **“SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS**

7 “(a) IN GENERAL.—Tobacco products shall be regu-
 8 lated by the Secretary under this chapter and shall not
 9 be subject to the provisions of chapter V, unless—

10 “(1) such products are intended for use in the
 11 diagnosis, cure, mitigation, treatment, or prevention
 12 of disease (within the meaning of section
 13 201(g)(1)(B) or section 201(h)(2)); or

14 “(2) a health claim is made for such products
 15 under section 201(g)(1)(C) or 201(h)(3).

16 “(b) APPLICABILITY.—This chapter shall apply to all
 17 tobacco products subject to the provisions of part 897 of
 18 title 21, Code of Federal Regulations, and to any other
 19 tobacco products that the Secretary by regulation deems
 20 to be subject to this chapter.

21 “(c) SCOPE.—

22 “(1) Nothing in this chapter, any policy issued
 23 or regulation promulgated thereunder, or the Na-
 24 tional Tobacco Policy and Youth Smoking Reduction
 25 Act, shall be construed to affect the Secretary’s au-

1 thority over, or the regulation of, products under
2 this Act that are not tobacco products under chapter
3 V of the Federal Food, Drug and Cosmetic Act or
4 any other chapter of that Act.

5 “(2) The provisions of this chapter shall not
6 apply to tobacco leaf that is not in the possession of
7 the manufacturer, or to the producers of tobacco
8 leaf, including tobacco growers, tobacco warehouses,
9 and tobacco grower cooperatives, nor shall any em-
10 ployee of the Food and Drug Administration have
11 any authority whatsoever to enter onto a farm
12 owned by a producer of tobacco leaf without the
13 written consent of such producer. Notwithstanding
14 any other provision of this subparagraph, if a pro-
15 ducer of tobacco leaf is also a tobacco product man-
16 ufacturer or controlled by a tobacco product manu-
17 facturer, the producer shall be subject to this chap-
18 ter in the producer’s capacity as a manufacturer.
19 Nothing in this chapter shall be construed to grant
20 the Secretary authority to promulgate regulations on
21 any matter that involves the production of tobacco
22 leaf or a producer thereof, other than activities by
23 a manufacturer affecting production. For purposes
24 of the preceding sentence, the term ‘controlled by’
25 means a member of the same controlled group of

1 corporations as that term is used in section 52(a) of
2 the Internal Revenue Code of 1986, or under com-
3 mon control within the meaning of the regulations
4 promulgated under section 52(b) of such Code.

5 **“SEC. 902. ADULTERATED TOBACCO PRODUCTS.**

6 “A tobacco product shall be deemed to be adulterated
7 if—

8 “(1) it consists in whole or in part of any filthy,
9 putrid, or decomposed substance, or is otherwise
10 contaminated by any poisonous or deleterious sub-
11 stance that may render the product injurious to
12 health;

13 “(2) it has been prepared, packed, or held
14 under insanitary conditions whereby it may have
15 been contaminated with filth, or whereby it may
16 have been rendered injurious to health;

17 “(3) its container is composed, in whole or in
18 part, of any poisonous or deleterious substance
19 which may render the contents injurious to health;

20 “(4) it is, or purports to be or is represented
21 as, a tobacco product which is subject to a perform-
22 ance standard established under section 907 unless
23 such tobacco product is in all respects in conformity
24 with such standard;

1 “(5) it is required by section 910(a) to have
2 premarket approval, is not exempt under section
3 906(f), and does not have an approved application in
4 effect;

5 “(6) the methods used in, or the facilities or
6 controls used for, its manufacture, packing or stor-
7 age are not in conformity with applicable require-
8 ments under section 906(e)(1) or an applicable con-
9 dition prescribed by an order under section
10 906(e)(2); or

11 “(7) it is a tobacco product for which an ex-
12 emption has been granted under section 906(f) for
13 investigational use and the person who was granted
14 such exemption or any investigator who uses such
15 tobacco product under such exemption fails to com-
16 ply with a requirement prescribed by or under such
17 section.

18 **“SEC. 903. MISBRANDED TOBACCO PRODUCTS.**

19 “(a) IN GENERAL.—A tobacco product shall be
20 deemed to be misbranded—

21 “(1) if its labeling is false or misleading in any
22 particular;

23 “(2) if in package form unless it bears a label
24 containing—

1 “(A) the name and place of business of the
2 tobacco product manufacturer, packer, or dis-
3 tributor; and

4 “(B) an accurate statement of the quantity
5 of the contents in terms of weight, measure, or
6 numerical count,
7 except that under subparagraph (B) of this para-
8 graph reasonable variations shall be permitted, and
9 exemptions as to small packages shall be established,
10 by regulations prescribed by the Secretary;

11 “(3) if any word, statement, or other informa-
12 tion required by or under authority of this chapter
13 to appear on the label or labeling is not prominently
14 placed thereon with such conspicuousness (as com-
15 pared with other words, statements or designs in the
16 labeling) and in such terms as to render it likely to
17 be read and understood by the ordinary individual
18 under customary conditions of purchase and use;

19 “(4) if it has an established name, unless its
20 label bears, to the exclusion of any other nonpropri-
21 etary name, its established name prominently print-
22 ed in type as required by the Secretary by regula-
23 tion;

24 “(5) if the Secretary has issued regulations re-
25 quiring that its labeling bear adequate directions for

1 use, or adequate warnings against use by children,
2 that are necessary for the protection of users unless
3 its labeling conforms in all respects to such regula-
4 tions;

5 “(6) if it was manufactured, prepared, propa-
6 gated, compounded, or processed in any State in an
7 establishment not duly registered under section
8 905(b), if it was not included in a list required by
9 section 905(i), if a notice or other information re-
10 specting it was not provided as required by such sec-
11 tion or section 905(j), or if it does not bear such
12 symbols from the uniform system for identification
13 of tobacco products prescribed under section 905(e)
14 as the Secretary by regulation requires;

15 “(7) if, in the case of any tobacco product dis-
16 tributed or offered for sale in any State—

17 “(A) its advertising is false or misleading
18 in any particular; or

19 “(B) it is sold, distributed, or used in vio-
20 lation of regulations prescribed under section
21 906(d);

22 “(8) unless, in the case of any tobacco product
23 distributed or offered for sale in any State, the man-
24 ufacturer, packer, or distributor thereof includes in
25 all advertisements and other descriptive printed mat-

1 ter issued or caused to be issued by the manufac-
2 turer, packer, or distributor with respect to that to-
3 bacco product—

4 “(A) a true statement of the tobacco prod-
5 uct’s established name as defined in paragraph
6 (4) of this subsection, printed prominently; and

7 “(B) a brief statement of—

8 “(i) the uses of the tobacco product
9 and relevant warnings, precautions, side
10 effects, and contraindications; and

11 “(ii) in the case of specific tobacco
12 products made subject to a finding by the
13 Secretary after notice and opportunity for
14 comment that such action is necessary to
15 protect the public health, a full description
16 of the components of such tobacco product
17 or the formula showing quantitatively each
18 ingredient of such tobacco product to the
19 extent required in regulations which shall
20 be issued by the Secretary after an oppor-
21 tunity for a hearing;

22 “(9) if it is a tobacco product subject to a per-
23 formance standard established under section 907,
24 unless it bears such labeling as may be prescribed in
25 such performance standard; or

1 “(10) if there was a failure or refusal—

2 “(A) to comply with any requirement pre-
3 scribed under section 904 or 908;

4 “(B) to furnish any material or informa-
5 tion required by or under section 909; or

6 “(C) to comply with a requirement under
7 section 912.

8 “(b) PRIOR APPROVAL OF STATEMENTS ON
9 LABEL.—The Secretary may, by regulation, require prior
10 approval of statements made on the label of a tobacco
11 product. No regulation issued under this subsection may
12 require prior approval by the Secretary of the content of
13 any advertisement and no advertisement of a tobacco
14 product, published after the date of enactment of the Na-
15 tional Tobacco Policy and Youth Smoking Reduction Act
16 shall, with respect to the matters specified in this section
17 or covered by regulations issued hereunder, be subject to
18 the provisions of sections 12 through 15 of the Federal
19 Trade Commission Act (15 U.S.C. 52 through 55). This
20 subsection does not apply to any printed matter which the
21 Secretary determines to be labeling as defined in section
22 201(m).

1 **“SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE**
2 **SECRETARY.**

3 “(a) REQUIREMENT.—Not later than 6 months after
4 the date of enactment of the National Tobacco Policy and
5 Youth Smoking Reduction Act, each tobacco product man-
6 ufacturer or importer of tobacco products, or agents there-
7 of, shall submit to the Secretary the following information:

8 “(1) A listing of all tobacco ingredients, sub-
9 stances and compounds that are, on such date,
10 added by the manufacturer to the tobacco, paper, fil-
11 ter, or other component of each tobacco product by
12 brand and by quantity in each brand and subbrand.

13 “(2) A description of the content, delivery, and
14 form of nicotine in each tobacco product measured
15 in milligrams of nicotine.

16 “(3) All documents (including underlying sci-
17 entific information) relating to research activities,
18 and research findings, conducted, supported, or pos-
19 sessed by the manufacturer (or agents thereof) on
20 the health, behavioral, or physiologic effects of to-
21 bacco products, their constituents, ingredients, and
22 components, and tobacco additives, described in
23 paragraph (1).

24 “(4) All documents (including underlying sci-
25 entific information) relating to research activities,
26 and research findings, conducted, supported, or pos-

1 sessed by the manufacturer (or agents thereof) that
2 relate to the issue of whether a reduction in risk to
3 health from tobacco products can occur upon the
4 employment of technology available or known to the
5 manufacturer.

6 “(5) All documents (including underlying sci-
7 entific information) relating to marketing research
8 involving the use of tobacco products.

9 An importer of a tobacco product not manufactured in the
10 United States shall supply the information required of a
11 tobacco product manufacturer under this subsection.

12 “(b) ANNUAL SUBMISSION.—A tobacco product man-
13 ufacturer or importer that is required to submit informa-
14 tion under subsection (a) shall update such information
15 on an annual basis under a schedule determined by the
16 Secretary.

17 “(c) TIME FOR SUBMISSION.—

18 “(1) NEW PRODUCTS.—At least 90 days prior
19 to the delivery for introduction into interstate com-
20 merce of a tobacco product not on the market on the
21 date of enactment of this chapter, the manufacturer
22 of such product shall provide the information re-
23 quired under subsection (a) and such product shall
24 be subject to the annual submission under sub-
25 section (b).

1 “(2) MODIFICATION OF EXISTING PRODUCTS.—

2 If at any time a tobacco product manufacturer adds
3 to its tobacco products a new tobacco additive, in-
4 creases or decreases the quantity of an existing to-
5 bacco additive or the nicotine content, delivery, or
6 form, or eliminates a tobacco additive from any to-
7 bacco product, the manufacturer shall within 60
8 days of such action so advise the Secretary in writ-
9 ing and reference such modification in submissions
10 made under subsection (b).

11 **“SEC. 905. ANNUAL REGISTRATION.**

12 “(a) DEFINITIONS.—As used in this section—

13 “(1) the term ‘manufacture, preparation,
14 compounding, or processing’ shall include repackag-
15 ing or otherwise changing the container, wrapper, or
16 labeling of any tobacco product package in further-
17 ance of the distribution of the tobacco product from
18 the original place of manufacture to the person who
19 makes final delivery or sale to the ultimate consumer
20 or user; and

21 “(2) the term ‘name’ shall include in the case
22 of a partnership the name of each partner and, in
23 the case of a corporation, the name of each cor-
24 porate officer and director, and the State of incorpo-
25 ration.

1 “(b) REGISTRATION BY OWNERS AND OPERATORS.—

2 On or before December 31 of each year every person who
3 owns or operates any establishment in any State engaged
4 in the manufacture, preparation, compounding, or proc-
5 essing of a tobacco product or tobacco products shall reg-
6 ister with the Secretary the name, places of business, and
7 all such establishments of that person.

8 “(c) REGISTRATION OF NEW OWNERS AND OPERA-

9 TORS.—Every person upon first engaging in the manufac-
10 ture, preparation, compounding, or processing of a tobacco
11 product or tobacco products in any establishment owned
12 or operated in any State by that person shall immediately
13 register with the Secretary that person’s name, place of
14 business, and such establishment.

15 “(d) REGISTRATION OF ADDED ESTABLISHMENTS.—

16 Every person required to register under subsection (b) or
17 (c) shall immediately register with the Secretary any addi-
18 tional establishment which that person owns or operates
19 in any State and in which that person begins the manufac-
20 ture, preparation, compounding, or processing of a tobacco
21 product or tobacco products.

22 “(e) UNIFORM PRODUCT IDENTIFICATION SYS-

23 TEM.—The Secretary may by regulation prescribe a uni-
24 form system for the identification of tobacco products and
25 may require that persons who are required to list such

1 tobacco products under subsection (i) of this section shall
2 list such tobacco products in accordance with such system.

3 “(f) PUBLIC ACCESS TO REGISTRATION INFORMA-
4 TION.—The Secretary shall make available for inspection,
5 to any person so requesting, any registration filed under
6 this section.

7 “(g) BIENNIAL INSPECTION OF REGISTERED ESTAB-
8 LISHMENTS.—Every establishment in any State registered
9 with the Secretary under this section shall be subject to
10 inspection under section 704, and every such establish-
11 ment engaged in the manufacture, compounding, or proc-
12 essing of a tobacco product or tobacco products shall be
13 so inspected by one or more officers or employees duly
14 designated by the Secretary at least once in the 2-year
15 period beginning with the date of registration of such es-
16 tablishment under this section and at least once in every
17 successive 2-year period thereafter.

18 “(h) FOREIGN ESTABLISHMENTS MAY REGISTER.—
19 Any establishment within any foreign country engaged in
20 the manufacture, preparation, compounding, or processing
21 of a tobacco product or tobacco products, may register
22 under this section under regulations promulgated by the
23 Secretary. Such regulations shall require such establish-
24 ment to provide the information required by subsection (i)
25 of this section and shall include provisions for registration

1 of any such establishment upon condition that adequate
2 and effective means are available, by arrangement with the
3 government of such foreign country or otherwise, to enable
4 the Secretary to determine from time to time whether to-
5 bacco products manufactured, prepared, compounded, or
6 processed in such establishment, if imported or offered for
7 import into the United States, shall be refused admission
8 on any of the grounds set forth in section 801(a).

9 “(i) REGISTRATION INFORMATION.—

10 “(1) PRODUCT LIST.—Every person who reg-
11 isters with the Secretary under subsection (b), (c),
12 or (d) of this section shall, at the time of registra-
13 tion under any such subsection, file with the Sec-
14 retary a list of all tobacco products which are being
15 manufactured, prepared, compounded, or processed
16 by that person for commercial distribution and
17 which has not been included in any list of tobacco
18 products filed by that person with the Secretary
19 under this paragraph or paragraph (2) before such
20 time of registration. Such list shall be prepared in
21 such form and manner as the Secretary may pre-
22 scribe and shall be accompanied by—

23 “(A) in the case of a tobacco product con-
24 tained in the applicable list with respect to
25 which a performance standard has been estab-

lished under section 907 or which is subject to section 910, a reference to the authority for the marketing of such tobacco product and a copy of all labeling for such tobacco product;

“(B) in the case of any other tobacco product contained in an applicable list, a copy of all consumer information and other labeling for such tobacco product, a representative sampling of advertisements for such tobacco product, and, upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and

“(C) if the registrant filing a list has determined that a tobacco product contained in such list is not subject to a performance standard established under section 907, a brief statement of the basis upon which the registrant made such determination if the Secretary requests such a statement with respect to that particular tobacco product.

“(2) BIENNIAL REPORT OF ANY CHANGE IN PRODUCT LIST.—Each person who registers with the Secretary under this section shall report to the Secretary once during the month of June of each year

1 and once during the month of December of each
2 year the following:

3 “(A) A list of each tobacco product intro-
4 duced by the registrant for commercial distribu-
5 tion which has not been included in any list
6 previously filed by that person with the Sec-
7 retary under this subparagraph or paragraph
8 (1) of this subsection. A list under this sub-
9 paragraph shall list a tobacco product by its es-
10 tablished name and shall be accompanied by the
11 other information required by paragraph (1).

12 “(B) If since the date the registrant last
13 made a report under this paragraph that person
14 has discontinued the manufacture, preparation,
15 compounding, or processing for commercial dis-
16 tribution of a tobacco product included in a list
17 filed under subparagraph (A) or paragraph (1),
18 notice of such discontinuance, the date of such
19 discontinuance, and the identity of its estab-
20 lished name.

21 “(C) If since the date the registrant re-
22 ported under subparagraph (B) a notice of dis-
23 continuance that person has resumed the manu-
24 facture, preparation, compounding, or process-
25 ing for commercial distribution of the tobacco

1 product with respect to which such notice of
2 discontinuance was reported, notice of such re-
3 sumption, the date of such resumption, the
4 identity of such tobacco product by established
5 name, and other information required by para-
6 graph (1), unless the registrant has previously
7 reported such resumption to the Secretary
8 under this subparagraph.

9 “(D) Any material change in any informa-
10 tion previously submitted under this paragraph
11 or paragraph (1).

12 “(j) REPORT PRECEDING INTRODUCTION OF CER-
13 TAIN SUBSTANTIALLY-EQUIVALENT PRODUCTS INTO
14 INTERSTATE COMMERCE.—

15 “(1) IN GENERAL.—Each person who is re-
16 quired to register under this section and who pro-
17 poses to begin the introduction or delivery for intro-
18 duction into interstate commerce for commercial dis-
19 tribution of a tobacco product intended for human
20 use that was not commercially marketed (other than
21 for test marketing) in the United States as of Au-
22 gust 11, 1995, as defined by the Secretary by regu-
23 lation shall, at least 90 days before making such in-
24 troduction or delivery, report to the Secretary (in

1 such form and manner as the Secretary shall by reg-
2 ulation prescribe)—

3 “(A) the basis for such person’s determina-
4 tion that the tobacco product is substantially
5 equivalent, within the meaning of section 910,
6 to a tobacco product commercially marketed
7 (other than for test marketing) in the United
8 States as of August 11, 1995, that is in compli-
9 ance with the requirements of this Act; and

10 “(B) action taken by such person to com-
11 ply with the requirements under section 907
12 that are applicable to the tobacco product.

13 “(2) APPLICATION TO CERTAIN POST-AUGUST
14 11TH PRODUCTS.—A report under this subsection
15 for a tobacco product that was first introduced or
16 delivered for introduction into interstate commerce
17 for commercial distribution in the United States
18 after August 11, 1995, and before the date of enact-
19 ment of the National Tobacco Policy and Youth
20 Smoking Reduction Act shall be submitted to the
21 Secretary within 6 months after the date of enact-
22 ment of that Act.

1 **“SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL**
2 **OF TOBACCO PRODUCTS.**

3 “(a) IN GENERAL.—Any requirement established by
4 or under section 902, 903, 905, or 909 applicable to a
5 tobacco product shall apply to such tobacco product until
6 the applicability of the requirement to the tobacco product
7 has been changed by action taken under section 907, sec-
8 tion 910, or subsection (d) of this section, and any re-
9 quirement established by or under section 902, 903, 905,
10 or 909 which is inconsistent with a requirement imposed
11 on such tobacco product under section 907, section 910,
12 or subsection (d) of this section shall not apply to such
13 tobacco product.

14 “(b) INFORMATION ON PUBLIC ACCESS AND COM-
15 MENT.—Each notice of proposed rulemaking under section
16 907, 908, 909, or 910, or under this section, any other
17 notice which is published in the Federal Register with re-
18 spect to any other action taken under any such section
19 and which states the reasons for such action, and each
20 publication of findings required to be made in connection
21 with rulemaking under any such section shall set forth—

22 “(1) the manner in which interested persons
23 may examine data and other information on which
24 the notice or findings is based; and

25 “(2) the period within which interested persons
26 may present their comments on the notice or find-

1 ings (including the need therefor) orally or in writ-
2 ing, which period shall be at least 60 days but may
3 not exceed 90 days unless the time is extended by
4 the Secretary by a notice published in the Federal
5 Register stating good cause therefor.

6 “(c) LIMITED CONFIDENTIALITY OF INFORMA-
7 TION.—Any information reported to or otherwise obtained
8 by the Secretary or the Secretary’s representative under
9 section 904, 907, 908, 909, or 910 or 704, or under sub-
10 section (e) or (f) of this section, which is exempt from
11 disclosure under subsection (a) of section 552 of title 5,
12 United States Code, by reason of subsection (b)(4) of that
13 section shall be considered confidential and shall not be
14 disclosed, except that the information may be disclosed to
15 other officers or employees concerned with carrying out
16 this chapter, or when relevant in any proceeding under
17 this chapter.

18 “(d) RESTRICTIONS.—

19 “(1) The Secretary may by regulation require
20 that a tobacco product be restricted to sale, distribu-
21 tion, or use upon such conditions, including restric-
22 tions on the access to, and the advertising and pro-
23 motion of, the tobacco product, as the Secretary may
24 prescribe in such regulation if, because of its poten-
25 tiality for harmful effect or the collateral measures

1 necessary to its use, the Secretary determines that
2 such regulation would be appropriate for the protec-
3 tion of the public health. The finding as to whether
4 such regulation would be appropriate for the protec-
5 tion of the public health shall be determined with re-
6 spect to the risks and benefits to the population as
7 a whole, including users and non-users of the to-
8 bacco product, and taking into account—

9 “(A) the increased or decreased likelihood
10 that existing users of tobacco products will stop
11 using such products; and

12 “(B) the increased or decreased likelihood
13 that those who do not use tobacco products will
14 start using such products.

15 No such condition may require that the sale or dis-
16 tribution of a tobacco product be limited to the writ-
17 ten or oral authorization of a practitioner licensed
18 by law to prescribe medical products.

19 “(2) The label of a tobacco product shall bear
20 such appropriate statements of the restrictions re-
21 quired by a regulation under subsection (a) as the
22 Secretary may in such regulation prescribe.

23 “(3) No restriction under paragraph (1) may
24 prohibit the sale of any tobacco product in face-to

1 face transactions by a specific category of retail out-
2 lets.

3 “(e) GOOD MANUFACTURING PRACTICE REQUIRE-
4 MENTS.—

5 “(1) METHODS, FACILITIES, AND CONTROLS TO
6 CONFORM.—

7 “(A) The Secretary may, in accordance
8 with subparagraph (B), prescribe regulations
9 requiring that the methods used in, and the fa-
10 cilities and controls used for, the manufacture,
11 pre-production design validation (including a
12 process to assess the performance of a tobacco
13 product), packing and storage of a tobacco
14 product, conform to current good manufactur-
15 ing practice, as prescribed in such regulations,
16 to assure that the public health is protected and
17 that the tobacco product is in compliance with
18 this chapter.

19 “(B) The Secretary shall—

20 “(i) before promulgating any regula-
21 tion under subparagraph (A), afford an ad-
22 visory committee an opportunity to submit
23 recommendations with respect to the regu-
24 lation proposed to be promulgated;

1 “(ii) before promulgating any regula-
2 tion under subparagraph (A), afford oppor-
3 tunity for an oral hearing;

4 “(iii) provide the advisory committee a
5 reasonable time to make its recommenda-
6 tion with respect to proposed regulations
7 under subparagraph (A); and

8 “(iv) in establishing the effective date
9 of a regulation promulgated under this
10 subsection, take into account the dif-
11 ferences in the manner in which the dif-
12 ferent types of tobacco products have his-
13 torically been produced, the financial re-
14 sources of the different tobacco product
15 manufacturers, and the state of their exist-
16 ing manufacturing facilities; and shall pro-
17 vide for a reasonable period of time for
18 such manufacturers to conform to good
19 manufacturing practices.

20 “(2) EXEMPTIONS; VARIANCES.—

21 “(A) Any person subject to any require-
22 ment prescribed under paragraph (1) may peti-
23 tion the Secretary for a permanent or tem-
24 porary exemption or variance from such re-
25 quirement. Such a petition shall be submitted

1 to the Secretary in such form and manner as
2 the Secretary shall prescribe and shall—

3 “(i) in the case of a petition for an ex-
4 emption from a requirement, set forth the
5 basis for the petitioner’s determination
6 that compliance with the requirement is
7 not required to assure that the tobacco
8 product will be in compliance with this
9 chapter;

10 “(ii) in the case of a petition for a
11 variance from a requirement, set forth the
12 methods proposed to be used in, and the
13 facilities and controls proposed to be used
14 for, the manufacture, packing, and storage
15 of the tobacco product in lieu of the meth-
16 ods, facilities, and controls prescribed by
17 the requirement; and

18 “(iii) contain such other information
19 as the Secretary shall prescribe.

20 “(B) The Secretary may refer to an advi-
21 sory committee any petition submitted under
22 subparagraph (A). The advisory committee
23 shall report its recommendations to the Sec-
24 retary with respect to a petition referred to it

1 within 60 days after the date of the petition's
2 referral. Within 60 days after—

3 “(i) the date the petition was submit-
4 ted to the Secretary under subparagraph
5 (A); or

6 “(ii) the day after the petition was re-
7 ferred to an advisory committee,
8 whichever occurs later, the Secretary shall by
9 order either deny the petition or approve it.

10 “(C) The Secretary may approve—

11 “(i) a petition for an exemption for a
12 tobacco product from a requirement if the
13 Secretary determines that compliance with
14 such requirement is not required to assure
15 that the tobacco product will be in compli-
16 ance with this chapter; and

17 “(ii) a petition for a variance for a to-
18 bacco product from a requirement if the
19 Secretary determines that the methods to
20 be used in, and the facilities and controls
21 to be used for, the manufacture, packing,
22 and storage of the tobacco product in lieu
23 of the methods, controls, and facilities pre-
24 scribed by the requirement are sufficient to

1 assure that the tobacco product will be in
2 compliance with this chapter.

3 “(D) An order of the Secretary approving
4 a petition for a variance shall prescribe such
5 conditions respecting the methods used in, and
6 the facilities and controls used for, the manu-
7 facture, packing, and storage of the tobacco
8 product to be granted the variance under the
9 petition as may be necessary to assure that the
10 tobacco product will be in compliance with this
11 chapter.

12 “(E) After the issuance of an order under
13 subparagraph (B) respecting a petition, the pe-
14 titioner shall have an opportunity for an infor-
15 mal hearing on such order.

16 “(3) Compliance with requirements under this
17 subsection shall not be required before the period
18 ending 3 years after the date of enactment of the
19 National Tobacco Policy and Youth Smoking Reduc-
20 tion Act.

21 “(f) EXEMPTION FOR INVESTIGATIONAL USE.—The
22 Secretary may exempt tobacco products intended for in-
23 vestigational use from this chapter under such conditions
24 as the Secretary may prescribe by regulation.

1 “(g) RESEARCH AND DEVELOPMENT.—The Sec-
 2 retary may enter into contracts for research, testing, and
 3 demonstrations respecting tobacco products and may ob-
 4 tain tobacco products for research, testing, and dem-
 5 onstration purposes without regard to section 3324(a) and
 6 (b) of title 31, United States Code, and section 5 of title
 7 41, United States Code.

8 **“SEC. 907. PERFORMANCE STANDARDS.**

9 “(a) IN GENERAL.—

10 “(1) FINDING REQUIRED.—The Secretary may
 11 adopt performance standards for a tobacco product
 12 if the Secretary finds that a performance standard
 13 is appropriate for the protection of the public health.
 14 This finding shall be determined with respect to the
 15 risks and benefits to the population as a whole, in-
 16 cluding users and non-users of the tobacco product,
 17 and taking into account—

18 “(A) the increased or decreased likelihood
 19 that existing users of tobacco products will stop
 20 using such products; and

21 “(B) the increased or decreased likelihood
 22 that those who do not use tobacco products will
 23 start using such products.

1 “(2) CONTENT OF PERFORMANCE STAND-
2 ARDS.—A performance standard established under
3 this section for a tobacco product—

4 “(A) shall include provisions to provide
5 performance that is appropriate for the protec-
6 tion of the public health, including provisions,
7 where appropriate—

8 “(i) for the reduction or elimination of
9 nicotine yields of the product;

10 “(ii) for the reduction or elimination
11 of other constituents or harmful compo-
12 nents of the product; or

13 “(iii) relating to any other require-
14 ment under (B);

15 “(B) shall, where necessary to be appro-
16 priate for the protection of the public health,
17 include—

18 “(i) provisions respecting the con-
19 struction, components, ingredients, and
20 properties of the tobacco product;

21 “(ii) provisions for the testing (on a
22 sample basis or, if necessary, on an indi-
23 vidual basis) of the tobacco product;

1 “(iii) provisions for the measurement
2 of the performance characteristics of the
3 tobacco product;

4 “(iv) provisions requiring that the re-
5 sults of each or of certain of the tests of
6 the tobacco product required to be made
7 under clause (ii) show that the tobacco
8 product is in conformity with the portions
9 of the standard for which the test or tests
10 were required; and

11 “(v) a provision requiring that the
12 sale and distribution of the tobacco prod-
13 uct be restricted but only to the extent
14 that the sale and distribution of a tobacco
15 product may be restricted under a regula-
16 tion under section 906(d); and

17 “(C) shall, where appropriate, require the
18 use and prescribe the form and content of label-
19 ing for the proper use of the tobacco product.

20 “(3) PERIODIC RE-EVALUATION OF PERFORM-
21 ANCE STANDARDS.—The Secretary shall provide for
22 periodic evaluation of performance standards estab-
23 lished under this section to determine whether such
24 standards should be changed to reflect new medical,
25 scientific, or other technological data. The Secretary

1 may provide for testing under paragraph (2) by any
2 person.

3 “(4) INVOLVEMENT OF OTHER AGENCIES; IN-
4 FORMED PERSONS.—In carrying out duties under
5 this section, the Secretary shall, to the maximum ex-
6 tent practicable—

7 “(A) use personnel, facilities, and other
8 technical support available in other Federal
9 agencies;

10 “(B) consult with other Federal agencies
11 concerned with standard-setting and other na-
12 tionally or internationally recognized standard-
13 setting entities; and

14 “(C) invite appropriate participation,
15 through joint or other conferences, workshops,
16 or other means, by informed persons represent-
17 ative of scientific, professional, industry, or con-
18 sumer organizations who in the Secretary’s
19 judgment can make a significant contribution.

20 “(b) ESTABLISHMENT OF STANDARDS.—

21 “(1) NOTICE.—

22 (A) The Secretary shall publish in the
23 Federal Register a notice of proposed rule-
24 making for the establishment, amendment, or

1 revocation of any performance standard for a
2 tobacco product.

3 “(B) A notice of proposed rulemaking for
4 the establishment or amendment of a perform-
5 ance standard for a tobacco product shall—

6 “(i) set forth a finding with support-
7 ing justification that the performance
8 standard is appropriate for the protection
9 of the public health;

10 “(ii) set forth proposed findings with
11 respect to the risk of illness or injury that
12 the performance standard is intended to
13 reduce or eliminate; and

14 “(iii) invite interested persons to sub-
15 mit an existing performance standard for
16 the tobacco product, including a draft or
17 proposed performance standard, for consid-
18 eration by the Secretary.

19 “(C) A notice of proposed rulemaking for
20 the revocation of a performance standard shall
21 set forth a finding with supporting justification
22 that the performance standard is no longer nec-
23 essary to be appropriate for the protection of
24 the public health.

1 “(D) The Secretary shall consider all infor-
2 mation submitted in connection with a proposed
3 standard, including information concerning the
4 countervailing effects of the performance stand-
5 ard on the health of adolescent tobacco users,
6 adult tobacco users, or non-tobacco users, such
7 as the creation of a significant demand for con-
8 traband or other tobacco products that do not
9 meet the requirements of this chapter and the
10 significance of such demand, and shall issue the
11 standard if the Secretary determines that the
12 standard would be appropriate for the protec-
13 tion of the public health.

14 “(E) The Secretary shall provide for a
15 comment period of not less than 60 days.

16 “(2) PROMULGATION.—

17 “(A) After the expiration of the period for
18 comment on a notice of proposed rulemaking
19 published under paragraph (1) respecting a per-
20 formance standard and after consideration of
21 such comments and any report from an advi-
22 sory committee, the Secretary shall—

23 “(i) promulgate a regulation establish-
24 ing a performance standard and publish in

1 the Federal Register findings on the mat-
2 ters referred to in paragraph (1); or

3 “(ii) publish a notice terminating the
4 proceeding for the development of the
5 standard together with the reasons for
6 such termination.

7 “(B) A regulation establishing a perform-
8 ance standard shall set forth the date or dates
9 upon which the standard shall take effect, but
10 no such regulation may take effect before one
11 year after the date of its publication unless the
12 Secretary determines that an earlier effective
13 date is necessary for the protection of the pub-
14 lic health. Such date or dates shall be estab-
15 lished so as to minimize, consistent with the
16 public health, economic loss to, and disruption
17 or dislocation of, domestic and international
18 trade.

19 “(3) SPECIAL RULE FOR STANDARD BANNING
20 CLASS OF PRODUCT OR ELIMINATING NICOTINE CON-
21 TENT.—Because of the importance of a decision of
22 the Secretary to issue a regulation establishing a
23 performance standard—

1 “(A) eliminating all cigarettes, all smoke-
2 less tobacco products, or any similar class of to-
3 bacco products, or

4 “(B) requiring the reduction of nicotine
5 yields of a tobacco product to zero,
6 it is appropriate for the Congress to have the oppor-
7 tunity to review such a decision. Therefore, any such
8 standard may not take effect before a date that is
9 2 years after the President notifies the Congress
10 that a final regulation imposing the restriction has
11 been issued.

12 “(4) AMENDMENT; REVOCATION.—

13 “(A) The Secretary, upon the Secretary’s
14 own initiative or upon petition of an interested
15 person may by a regulation, promulgated in ac-
16 cordance with the requirements of paragraphs
17 (1) and (2)(B) of this subsection, amend or re-
18 voke a performance standard.

19 “(B) The Secretary may declare a pro-
20 posed amendment of a performance standard to
21 be effective on and after its publication in the
22 Federal Register and until the effective date of
23 any final action taken on such amendment if
24 the Secretary determines that making it so ef-
25 fective is in the public interest.

1 “(5) REFERENCE TO ADVISORY COMMITTEE.—

2 The Secretary—

3 “(A) may, on the Secretary’s own initia-
4 tive, refer a proposed regulation for the estab-
5 lishment, amendment, or revocation of a per-
6 formance standard; or

7 “(B) shall, upon the request of an inter-
8 ested person which demonstrates good cause for
9 referral and which is made before the expiration
10 of the period for submission of comments on
11 such proposed regulation,

12 refer such proposed regulation to an advisory committee,
13 for a report and recommendation with respect to any mat-
14 ter involved in the proposed regulation which requires the
15 exercise of scientific judgment. If a proposed regulation
16 is referred under this subparagraph to the advisory com-
17 mittee, the Secretary shall provide the advisory committee
18 with the data and information on which such proposed
19 regulation is based. The advisory committee shall, within
20 60 days after the referral of a proposed regulation and
21 after independent study of the data and information fur-
22 nished to it by the Secretary and other data and informa-
23 tion before it, submit to the Secretary a report and rec-
24 ommendation respecting such regulation, together with all
25 underlying data and information and a statement of the

1 reason or basis for the recommendation. A copy of such
2 report and recommendation shall be made public by the
3 Secretary.

4 **“SEC. 908. NOTIFICATION AND OTHER REMEDIES**

5 “(a) NOTIFICATION.—If the Secretary determines
6 that—

7 “(1) a tobacco product which is introduced or
8 delivered for introduction into interstate commerce
9 for commercial distribution presents an unreasonable
10 risk of substantial harm to the public health; and

11 “(2) notification under this subsection is nec-
12 essary to eliminate the unreasonable risk of such
13 harm and no more practicable means is available
14 under the provisions of this chapter (other than this
15 section) to eliminate such risk,

16 the Secretary may issue such order as may be necessary
17 to assure that adequate notification is provided in an ap-
18 propriate form, by the persons and means best suited
19 under the circumstances involved, to all persons who
20 should properly receive such notification in order to elimi-
21 nate such risk. The Secretary may order notification by
22 any appropriate means, including public service announce-
23 ments. Before issuing an order under this subsection, the
24 Secretary shall consult with the persons who are to give
25 notice under the order.

1 “(b) NO EXEMPTION FROM OTHER LIABILITY.—

2 Compliance with an order issued under this section shall
3 not relieve any person from liability under Federal or
4 State law. In awarding damages for economic loss in an
5 action brought for the enforcement of any such liability,
6 the value to the plaintiff in such action of any remedy
7 provided under such order shall be taken into account.

8 “(c) RECALL AUTHORITY.—

9 “(1) IN GENERAL.—If the Secretary finds that
10 there is a reasonable probability that a tobacco prod-
11 uct contains a manufacturing or other defect not or-
12 dinarily contained in tobacco products on the market
13 that would cause serious, adverse health con-
14 sequences or death, the Secretary shall issue an
15 order requiring the appropriate person (including
16 the manufacturers, importers, distributors, or retail-
17 ers of the tobacco product) to immediately cease dis-
18 tribution of such tobacco product. The order shall
19 provide the person subject to the order with an op-
20 portunity for an informal hearing, to be held not
21 later than 10 days after the date of the issuance of
22 the order, on the actions required by the order and
23 on whether the order should be amended to require
24 a recall of such tobacco product. If, after providing
25 an opportunity for such a hearing, the Secretary de-

1 termines that inadequate grounds exist to support
2 the actions required by the order, the Secretary shall
3 vacate the order.

4 “(2) AMENDMENT OF ORDER TO REQUIRE RE-
5 CALL.—

6 “(A) If, after providing an opportunity for
7 an informal hearing under paragraph (1), the
8 Secretary determines that the order should be
9 amended to include a recall of the tobacco prod-
10 uct with respect to which the order was issued,
11 the Secretary shall, except as provided in sub-
12 paragraph (B), amend the order to require a
13 recall. The Secretary shall specify a timetable in
14 which the tobacco product recall will occur and
15 shall require periodic reports to the Secretary
16 describing the progress of the recall.

17 “(B) An amended order under subpara-
18 graph (A)—

19 “(i) shall not include recall of a to-
20 bacco product from individuals; and

21 “(ii) shall provide for notice to per-
22 sons subject to the risks associated with
23 the use of such tobacco product.

24 In providing the notice required by clause (ii),
25 the Secretary may use the assistance of retail-

1 ers and other persons who distributed such to-
2 bacco product. If a significant number of such
3 persons cannot be identified, the Secretary shall
4 notify such persons under section 705(b).

5 “(3) REMEDY NOT EXCLUSIVE.—The remedy
6 provided by this subsection shall be in addition to
7 remedies provided by subsection (a) of this section.

8 **“SEC. 909. RECORDS AND REPORTS ON TOBACCO PROD-**
9 **UCTS.**

10 “(a) IN GENERAL.—Every person who is a tobacco
11 product manufacturer or importer of a tobacco product
12 shall establish and maintain such records, make such re-
13 ports, and provide such information, as the Secretary may
14 by regulation reasonably require to assure that such to-
15 bacco product is not adulterated or misbranded and to
16 otherwise protect public health. Regulations prescribed
17 under the preceding sentence—

18 “(1) may require a tobacco product manufac-
19 turer or importer to report to the Secretary when-
20 ever the manufacturer or importer receives or other-
21 wise becomes aware of information that reasonably
22 suggests that one of its marketed tobacco products
23 may have caused or contributed to a serious unex-
24 pected adverse experience associated with the use of
25 the product or any significant increase in the fre-

1 quency of a serious, expected adverse product experi-
2 ence;

3 “(2) shall require reporting of other significant
4 adverse tobacco product experiences as determined
5 by the Secretary to be necessary to be reported;

6 “(3) shall not impose requirements unduly bur-
7 densome to a tobacco product manufacturer or im-
8 porter, taking into account the cost of complying
9 with such requirements and the need for the protec-
10 tion of the public health and the implementation of
11 this chapter;

12 “(4) when prescribing the procedure for making
13 requests for reports or information, shall require
14 that each request made under such regulations for
15 submission of a report or information to the Sec-
16 retary state the reason or purpose for such request
17 and identify to the fullest extent practicable such re-
18 port or information;

19 “(5) when requiring submission of a report or
20 information to the Secretary, shall state the reason
21 or purpose for the submission of such report or in-
22 formation and identify to the fullest extent prac-
23 ticable such report or information; and

24 “(6) may not require that the identity of any
25 patient or user be disclosed in records, reports, or

1 information required under this subsection unless re-
2 quired for the medical welfare of an individual, to
3 determine risks to public health of a tobacco prod-
4 uct, or to verify a record, report, or information sub-
5 mitted under this chapter.

6 In prescribing regulations under this subsection, the Sec-
7 retary shall have due regard for the professional ethics of
8 the medical profession and the interests of patients. The
9 prohibitions of paragraph (6) of this subsection continue
10 to apply to records, reports, and information concerning
11 any individual who has been a patient, irrespective of
12 whether or when he ceases to be a patient.

13 “(b) REPORTS OF REMOVALS AND CORRECTIONS.—

14 (1) Except as provided in paragraph (3), the
15 Secretary shall by regulation require a tobacco prod-
16 uct manufacturer or importer of a tobacco product
17 to report promptly to the Secretary any corrective
18 action taken or removal from the market of a to-
19 bacco product undertaken by such manufacturer or
20 importer if the removal or correction was under-
21 taken—

22 “(A) to reduce a risk to health posed by
23 the tobacco product; or

1 “(B) to remedy a violation of this chapter
 2 caused by the tobacco product which may
 3 present a risk to health.

4 A tobacco product manufacturer or importer of a tobacco
 5 product who undertakes a corrective action or removal
 6 from the market of a tobacco product which is not re-
 7 quired to be reported under this subsection shall keep a
 8 record of such correction or removal.

9 “(2) No report of the corrective action or re-
 10 moval of a tobacco product may be required under
 11 paragraph (1) if a report of the corrective action or
 12 removal is required and has been submitted under
 13 subsection (a) of this section.

14 **“SEC. 910. PREMARKET REVIEW OF CERTAIN TOBACCO**
 15 **PRODUCTS.**

16 “(a) IN GENERAL.—

17 “(1) PREMARKET APPROVAL REQUIRED.—

18 “(A) NEW PRODUCTS.—Approval under
 19 this section of an application for premarket ap-
 20 proval for any tobacco product that is not com-
 21 mercially marketed (other than for test market-
 22 ing) in the United States as of August 11,
 23 1995, is required unless the manufacturer has
 24 submitted a report under section 905(j), and
 25 the Secretary has issued an order that the to-

1 bacco product is substantially equivalent to a
2 tobacco product commercially marketed (other
3 than for test marketing) in the United States
4 as of August 11, 1995, that is in compliance
5 with the requirements of this Act.

6 “(B) PRODUCTS INTRODUCED BETWEEN
7 AUGUST 11, 1995, AND ENACTMENT OF THIS
8 CHAPTER.—Subparagraph (A) does not apply
9 to a tobacco product that—

10 “(i) was first introduced or delivered
11 for introduction into interstate commerce
12 for commerce for commercial distribution
13 in the United States after August 11,
14 1995, and before the date of enactment of
15 the National Tobacco Policy and Youth
16 Smoking Reduction Act; and

17 “(ii) for which a report was submitted
18 under section 905(j) within 6 months after
19 such date,

20 until the Secretary issues an order that the to-
21 bacco product is substantially equivalent for
22 purposes of this section or requires premarket
23 approval.

24 “(2) SUBSTANTIALLY EQUIVALENT DEFINED.—

1 “(A) For purposes of this section and sec-
2 tion 905(j), the term ‘substantially equivalent’
3 or ‘substantial equivalence’ mean, with respect
4 to the tobacco product being compared to the
5 predicate tobacco product, that the Secretary by
6 order has found that the tobacco product—

7 “(i) has the same characteristics as
8 the predicate tobacco product; or

9 “(ii) has different characteristics and
10 the information submitted contains infor-
11 mation, including clinical data if deemed
12 necessary by the Secretary, that dem-
13 onstrates that it is not appropriate to reg-
14 ulate the product under this section be-
15 cause the product does not raise different
16 questions of public health.

17 “(B) For purposes of subparagraph (A),
18 the term ‘characteristics’ means the materials,
19 ingredients, design, composition, heating source,
20 or other features of a tobacco product.

21 “(C) A tobacco product may not be found
22 to be substantially equivalent to a predicate to-
23 bacco product that has been removed from the
24 market at the initiative of the Secretary or that

1 has been determined by a judicial order to be
2 misbranded or adulterated.

3 “(3) HEALTH INFORMATION.—

4 “(A) As part of a submission under section
5 905(j) respecting a tobacco product, the person
6 required to file a premarket notification under
7 such section shall provide an adequate summary
8 of any health information related to the tobacco
9 product or state that such information will be
10 made available upon request by any person.

11 “(B) Any summary under subparagraph
12 (A) respecting a tobacco product shall contain
13 detailed information regarding data concerning
14 adverse health effects and shall be made avail-
15 able to the public by the Secretary within 30
16 days of the issuance of a determination that
17 such tobacco product is substantially equivalent
18 to another tobacco product.

19 “(b) APPLICATION.—

20 “(1) CONTENTS.—An application for premarket
21 approval shall contain—

22 “(A) full reports of all information, pub-
23 lished or known to or which should reasonably
24 be known to the applicant, concerning investiga-
25 tions which have been made to show the health

1 risks of such tobacco product and whether such
2 tobacco product presents less risk than other
3 tobacco products;

4 “(B) a full statement of the components,
5 ingredients, and properties, and of the principle
6 or principles of operation, of such tobacco prod-
7 uct;

8 “(C) a full description of the methods used
9 in, and the facilities and controls used for, the
10 manufacture, processing, and, when relevant,
11 packing and installation of, such tobacco prod-
12 uct;

13 “(D) an identifying reference to any per-
14 formance standard under section 907 which
15 would be applicable to any aspect of such to-
16 bacco product, and either adequate information
17 to show that such aspect of such tobacco prod-
18 uct fully meets such performance standard or
19 adequate information to justify any deviation
20 from such standard;

21 “(E) such samples of such tobacco product
22 and of components thereof as the Secretary
23 may reasonably require;

24 “(F) specimens of the labeling proposed to
25 be used for such tobacco product; and

1 “(G) such other information relevant to
2 the subject matter of the application as the Sec-
3 retary may require.

4 “(2) REFERENCE TO ADVISORY COMMITTEE.—
5 Upon receipt of an application meeting the require-
6 ments set forth in paragraph (1), the Secretary—

7 “(A) may, on the Secretary’s own initia-
8 tive; or

9 “(B) shall, upon the request of an appli-
10 cant,

11 refer such application to an advisory committee and
12 for submission (within such period as the Secretary
13 may establish) of a report and recommendation re-
14 specting approval of the application, together with
15 all underlying data and the reasons or basis for the
16 recommendation.

17 “(c) ACTION ON APPLICATION.—

18 “(1) DEADLINE.—

19 “(A) As promptly as possible, but in no
20 event later than 180 days after the receipt of
21 an application under subsection (b) of this sec-
22 tion, the Secretary, after considering the report
23 and recommendation submitted under para-
24 graph (2) of such subsection, shall—

1 “(i) issue an order approving the ap-
2 plication if the Secretary finds that none of
3 the grounds for denying approval specified
4 in paragraph (2) of this subsection applies;
5 or

6 “(ii) deny approval of the application
7 if the Secretary finds (and sets forth the
8 basis for such finding as part of or accom-
9 panying such denial) that one or more
10 grounds for denial specified in paragraph
11 (2) of this subsection apply.

12 “(B) An order approving an application for
13 a tobacco product may require as a condition to
14 such approval that the sale and distribution of
15 the tobacco product be restricted but only to
16 the extent that the sale and distribution of a to-
17 bacco product may be restricted under a regula-
18 tion under section 906(d).

19 “(2) DENIAL OF APPROVAL.—The Secretary
20 shall deny approval of an application for a tobacco
21 product if, upon the basis of the information submit-
22 ted to the Secretary as part of the application and
23 any other information before the Secretary with re-
24 spect to such tobacco product, the Secretary finds
25 that—

1 “(A) there is a lack of a showing that per-
2 mitting such tobacco product to be marketed
3 would be appropriate for the protection of the
4 public health;

5 “(B) the methods used in, or the facilities
6 or controls used for, the manufacture, process-
7 ing, or packing of such tobacco product do not
8 conform to the requirements of section 906(e);

9 “(C) based on a fair evaluation of all mate-
10 rial facts, the proposed labeling is false or mis-
11 leading in any particular; or

12 “(D) such tobacco product is not shown to
13 conform in all respects to a performance stand-
14 ard in effect under section 907, compliance with
15 which is a condition to approval of the applica-
16 tion, and there is a lack of adequate informa-
17 tion to justify the deviation from such standard.

18 “(3) DENIAL INFORMATION.—Any denial of an
19 application shall, insofar as the Secretary determines
20 to be practicable, be accompanied by a statement in-
21 forming the applicant of the measures required to
22 place such application in approvable form (which
23 measures may include further research by the appli-
24 cant in accordance with one or more protocols pre-
25 scribed by the Secretary).

1 “(4) BASIS FOR FINDING.—For purposes of
2 this section, the finding as to whether approval of a
3 tobacco product is appropriate for the protection of
4 the public health shall be determined with respect to
5 the risks and benefits to the population as a whole,
6 including users and non-users of the tobacco prod-
7 uct, and taking into account—

8 “(A) the increased or decreased likelihood
9 that existing users of tobacco products will stop
10 using such products; and

11 “(B) the increased or decreased likelihood
12 that those who do not use tobacco products will
13 start using such products.

14 “(5) BASIS FOR ACTION.—

15 “(A) For purposes of paragraph (2)(A),
16 whether permitting a tobacco product to be
17 marketed would be appropriate for the protec-
18 tion of the public health shall, when appro-
19 priate, be determined on the basis of well-con-
20 trolled investigations, which may include one or
21 more clinical investigations by experts qualified
22 by training and experience to evaluate the to-
23 bacco product.

24 “(B) If the Secretary determines that
25 there exists valid scientific evidence (other than

1 evidence derived from investigations described
2 in subparagraph (A)) which is sufficient to
3 evaluate the tobacco product the Secretary may
4 authorize that the determination for purposes
5 of paragraph (2)(A) be made on the basis of
6 such evidence.

7 “(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—

8 “(1) IN GENERAL.—The Secretary shall, upon
9 obtaining, where appropriate, advice on scientific
10 matters from an advisory committee, and after due
11 notice and opportunity for informal hearing to the
12 holder of an approved application for a tobacco
13 product, issue an order withdrawing approval of the
14 application if the Secretary finds—

15 “(A) that the continued marketing of such
16 tobacco product no longer is appropriate for the
17 protection of the public health;

18 “(B) that the application contained or was
19 accompanied by an untrue statement of a mate-
20 rial fact;

21 “(C) that the applicant—

22 “(i) has failed to establish a system
23 for maintaining records, or has repeatedly
24 or deliberately failed to maintain records

1 or to make reports, required by an applica-
2 ble regulation under section 909;

3 “(ii) has refused to permit access to,
4 or copying or verification of, such records
5 as required by section 704; or

6 “(iii) has not complied with the re-
7 quirements of section 905;

8 “(D) on the basis of new information be-
9 fore the Secretary with respect to such tobacco
10 product, evaluated together with the evidence
11 before the Secretary when the application was
12 approved, that the methods used in, or the fa-
13 cilities and controls used for, the manufacture,
14 processing, packing, or installation of such to-
15 bacco product do not conform with the require-
16 ments of section 906(e) and were not brought
17 into conformity with such requirements within a
18 reasonable time after receipt of written notice
19 from the Secretary of nonconformity;

20 “(E) on the basis of new information be-
21 fore the Secretary, evaluated together with the
22 evidence before the Secretary when the applica-
23 tion was approved, that the labeling of such to-
24 bacco product, based on a fair evaluation of all
25 material facts, is false or misleading in any par-

1 ticular and was not corrected within a reason-
2 able time after receipt of written notice from
3 the Secretary of such fact; or

4 “(F) on the basis of new information be-
5 fore the Secretary, evaluated together with the
6 evidence before the Secretary when the applica-
7 tion was approved, that such tobacco product is
8 not shown to conform in all respects to a per-
9 formance standard which is in effect under sec-
10 tion 907, compliance with which was a condi-
11 tion to approval of the application, and that
12 there is a lack of adequate information to jus-
13 tify the deviation from such standard.

14 “(2) APPEAL.—The holder of an application
15 subject to an order issued under paragraph (1) with-
16 drawing approval of the application may, by petition
17 filed on or before the thirtieth day after the date
18 upon which he receives notice of such withdrawal,
19 obtain review thereof in accordance with subsection
20 (e) of this section.

21 “(3) TEMPORARY SUSPENSION.—If, after pro-
22 viding an opportunity for an informal hearing, the
23 Secretary determines there is reasonable probability
24 that the continuation of distribution of a tobacco
25 product under an approved application would cause

1 serious, adverse health consequences or death, that
2 is greater than ordinarily caused by tobacco prod-
3 ucts on the market, the Secretary shall by order
4 temporarily suspend the approval of the application
5 approved under this section. If the Secretary issues
6 such an order, the Secretary shall proceed expedi-
7 tiously under paragraph (1) to withdraw such appli-
8 cation.

9 “(e) SERVICE OF ORDER.—An order issued by the
10 Secretary under this section shall be served—

11 “(1) in person by any officer or employee of the
12 department designated by the Secretary; or

13 “(2) by mailing the order by registered mail or
14 certified mail addressed to the applicant at the ap-
15 plicant’s last known address in the records of the
16 Secretary.

17 **“SEC. 911. JUDICIAL REVIEW.**

18 “(a) IN GENERAL.—Not later than 30 days after—

19 “(1) the promulgation of a regulation under
20 section 907 establishing, amending, or revoking a
21 performance standard for a tobacco product; or

22 “(2) a denial of an application for approval
23 under section 910(c),

24 any person adversely affected by such regulation or order
25 may file a petition with the United States Court of Ap-

1 peals for the District of Columbia or for the circuit where-
2 in such person resides or has his principal place of busi-
3 ness for judicial review of such regulation or order. A copy
4 of the petition shall be transmitted by the clerk of the
5 court to the Secretary or other officer designated by the
6 Secretary for that purpose. The Secretary shall file in the
7 court the record of the proceedings on which the Secretary
8 based the Secretary's regulation or order and each record
9 or order shall contain a statement of the reasons for its
10 issuance and the basis, on the record, for its issuance. For
11 purposes of this section, the term 'record' means all no-
12 tices and other matter published in the Federal Register
13 with respect to the regulation or order reviewed, all infor-
14 mation submitted to the Secretary with respect to such
15 regulation or order, proceedings of any panel or advisory
16 committee with respect to such regulation or order, any
17 hearing held with respect to such regulation or order, and
18 any other information identified by the Secretary, in the
19 administrative proceeding held with respect to such regu-
20 lation or order, as being relevant to such regulation or
21 order.

22 “(b) COURT MAY ORDER SECRETARY TO MAKE AD-
23 DITIONAL FINDINGS.—If the petitioner applies to the
24 court for leave to adduce additional data, views, or argu-
25 ments respecting the regulation or order being reviewed

1 and shows to the satisfaction of the court that such addi-
2 tional data, views, or arguments are material and that
3 there were reasonable grounds for the petitioner's failure
4 to adduce such data, views, or arguments in the proceed-
5 ings before the Secretary, the court may order the Sec-
6 retary to provide additional opportunity for the oral pres-
7 entation of data, views, or arguments and for written sub-
8 missions. The Secretary may modify the Secretary's find-
9 ings, or make new findings by reason of the additional
10 data, views, or arguments so taken and shall file with the
11 court such modified or new findings, and the Secretary's
12 recommendation, if any, for the modification or setting
13 aside of the regulation or order being reviewed, with the
14 return of such additional data, views, or arguments.

15 “(c) STANDARD OF REVIEW.—Upon the filing of the
16 petition under subsection (a) of this section for judicial
17 review of a regulation or order, the court shall have juris-
18 diction to review the regulation or order in accordance
19 with chapter 7 of title 5, United States Code, and to grant
20 appropriate relief, including interim relief, as provided in
21 such chapter. A regulation or order described in paragraph
22 (1) or (2) of subsection (a) of this section shall not be
23 affirmed if it is found to be unsupported by substantial
24 evidence on the record taken as a whole.

1 “(d) FINALITY OF JUDGMENT.—The judgment of the
2 court affirming or setting aside, in whole or in part, any
3 regulation or order shall be final, subject to review by the
4 Supreme Court of the United States upon certiorari or
5 certification, as provided in section 1254 of title 28,
6 United States Code.

7 “(e) OTHER REMEDIES.—The remedies provided for
8 in this section shall be in addition to and not in lieu of
9 any other remedies provided by law.

10 “(f) REGULATIONS AND ORDERS MUST RECITE
11 BASIS IN RECORD.—To facilitate judicial review under
12 this section or under any other provision of law of a regu-
13 lation or order issued under section 906, 907, 908, 909,
14 910, or 914, each such regulation or order shall contain
15 a statement of the reasons for its issuance and the basis,
16 in the record of the proceedings held in connection with
17 its issuance, for its issuance.

18 **“SEC. 912. POSTMARKET SURVEILLANCE**

19 “(a) DISCRETIONARY SURVEILLANCE.—The Sec-
20 retary may require a tobacco product manufacturer to
21 conduct postmarket surveillance for a tobacco product of
22 the manufacturer if the Secretary determines that
23 postmarket surveillance of the tobacco product is nec-
24 essary to protect the public health or is necessary to pro-

1 vide information regarding the health risks and other safe-
2 ty issues involving the tobacco product.

3 “(b) SURVEILLANCE APPROVAL.—Each tobacco
4 product manufacturer required to conduct a surveillance
5 of a tobacco product under subsection (a) of this section
6 shall, within 30 days after receiving notice that the manu-
7 facturer is required to conduct such surveillance, submit,
8 for the approval of the Secretary, a protocol for the re-
9 quired surveillance. The Secretary, within 60 days of the
10 receipt of such protocol, shall determine if the principal
11 investigator proposed to be used in the surveillance has
12 sufficient qualifications and experience to conduct such
13 surveillance and if such protocol will result in collection
14 of useful data or other information necessary to protect
15 the public health. The Secretary may not approve such
16 a protocol until it has been reviewed by an appropriately
17 qualified scientific and technical review committee estab-
18 lished by the Secretary.

19 **“SEC. 913. REDUCED RISK TOBACCO PRODUCTS.**

20 “(a) REQUIREMENTS.—

21 “(1) IN GENERAL.—For purposes of this sec-
22 tion, the term ‘reduced risk tobacco product’ means
23 a tobacco product designated by the Secretary under
24 paragraph (2).

25 “(2) DESIGNATION.—

1 “(A) IN GENERAL.—A product may be
2 designated by the Secretary as a reduced risk
3 tobacco product if the Secretary finds that the
4 product will significantly reduce harm to indi-
5 viduals caused by a tobacco product and is oth-
6 erwise appropriate to protect public health,
7 based on an application submitted by the manu-
8 facturer of the product (or other responsible
9 person) that—

10 “(i) demonstrates through testing on
11 animals and short-term human testing that
12 use of such product results in ingestion or
13 inhalation of a substantially lower yield of
14 toxic substances than use of conventional
15 tobacco products in the same category as
16 the proposed reduced risk product; and

17 “(ii) if required by the Secretary, in-
18 cludes studies of the long-term health ef-
19 fects of the product.

20 If such studies are required, the manufacturer
21 may consult with the Secretary regarding proto-
22 cols for conducting the studies.

23 “(B) BASIS FOR FINDING.—In making the
24 finding under subparagraph (A), the Secretary
25 shall take into account—

1 “(i) the risks and benefits to the pop-
2 ulation as a whole, including both users of
3 tobacco products and non-users of tobacco
4 products;

5 “(ii) the increased or decreased likeli-
6 hood that existing users of tobacco prod-
7 ucts will stop using such products includ-
8 ing reduced risk tobacco products;

9 “(iii) the increased or decreased likeli-
10 hood that those who do not use tobacco
11 products will start to use such products,
12 including reduced risk tobacco products;
13 and

14 “(iv) the risks and benefits to con-
15 sumers from the use of a reduced risk to-
16 bacco product as compared to the use of
17 products approved under chapter V to re-
18 duce exposure to tobacco.

19 “(3) MARKETING REQUIREMENTS.—A tobacco
20 product may be marketed and labeled as a reduced
21 risk tobacco product if it—

22 “(A) has been designated as a reduced risk
23 tobacco product by the Secretary under para-
24 graph (2);

1 “(B) bears a label prescribed by the Sec-
2 retary concerning the product’s contribution to
3 reducing harm to health; and

4 “(C) complies with requirements prescribed
5 by the Secretary relating to marketing and ad-
6 vertising of the product, and other provisions of
7 this chapter as prescribed by the Secretary.

8 “(b) REVOCATION OF DESIGNATION.—At any time
9 after the date on which a tobacco product is designated
10 as a reduced risk tobacco product under this section the
11 Secretary may, after providing an opportunity for an in-
12 formal hearing, revoke such designation if the Secretary
13 determines, based on information not available at the time
14 of the designation, that—

15 “(1) the finding made under subsection (a)(2)
16 is no longer valid; or

17 “(2) the product is being marketed in violation
18 of subsection (a)(3).

19 “(c) LIMITATION.—A tobacco product that is des-
20 ignated as a reduced risk tobacco product that is in com-
21 pliance with subsection (a) shall not be regulated as a
22 drug or device.

23 “(d) DEVELOPMENT OF REDUCED RISK TOBACCO
24 PRODUCT TECHNOLOGY.—A tobacco product manufac-
25 turer shall provide written notice to the Secretary upon

1 the development or acquisition by the manufacturer of any
 2 technology that would reduce the risk of a tobacco product
 3 to the health of the user for which the manufacturer is
 4 not seeking designation as a ‘reduced risk tobacco product’
 5 under subsection (a).

6 **“SEC. 914. PRESERVATION OF STATE AND LOCAL AUTHOR-**
 7 **ITY.**

8 “(a) ADDITIONAL REQUIREMENTS.—

9 “(1) IN GENERAL.—Except as provided in para-
 10 graph (2), nothing in this Act shall be construed as
 11 prohibiting a State or political subdivision thereof
 12 from adopting or enforcing a requirement applicable
 13 to a tobacco product that is in addition to, or more
 14 stringent than, requirements established under this
 15 chapter.

16 “(2) PREEMPTION OF CERTAIN STATE AND
 17 LOCAL REQUIREMENTS.—

18 “(A) Except as provided in subparagraph
 19 (B), no State or political subdivision of a State
 20 may establish or continue in effect with respect
 21 to a tobacco product any requirement which is
 22 different from, or in addition to, any require-
 23 ment applicable under the provisions of this
 24 chapter relating to performance standards, pre-
 25 market approval, adulteration, misbranding,

1 registration, reporting, good manufacturing
2 standards, or reduced risk products.

3 “(B) Subparagraph (A) does not apply to
4 requirements relating to the sale, use, or dis-
5 tribution of a tobacco product including require-
6 ments related to the access to, and the advertis-
7 ing and promotion of, a tobacco product.

8 “(b) RULE OF CONSTRUCTION REGARDING PRODUCT
9 LIABILITY.—No provision of this chapter relating to a to-
10 bacco product shall be construed to modify or otherwise
11 affect any action or the liability of any person under the
12 product liability law of any State.

13 “(c) WAIVERS.—Upon the application of a State or
14 political subdivision thereof, the Secretary may, by regula-
15 tion promulgated after notice and an opportunity for an
16 oral hearing, exempt from subsection (a), under such con-
17 ditions as may be prescribed in such regulation, a require-
18 ment of such State or political subdivision applicable to
19 a tobacco product if—

20 “(1) the requirement is more stringent than a
21 requirement applicable under the provisions de-
22 scribed in subsection (a)(3) which would be applica-
23 ble to the tobacco product if an exemption were not
24 in effect under this subsection; or

25 “(2) the requirement—

1 “(A) is required by compelling local condi-
2 tions; and

3 “(B) compliance with the requirement
4 would not cause the tobacco product to be in
5 violation of any applicable requirement of this
6 chapter.

7 **“SEC. 915. EQUAL TREATMENT OF RETAIL OUTLETS.**

8 “The Secretary shall issue regulations to require that
9 retail establishments for which the predominant business
10 is the sale of tobacco products comply with any advertising
11 restrictions applicable to retail establishments accessible
12 to individuals under the age of 18.”.

13 **SEC. 102. CONFORMING AND OTHER AMENDMENTS TO GEN-**
14 **ERAL PROVISIONS.**

15 (a) AMENDMENT OF FEDERAL FOOD, DRUG, AND
16 COSMETIC ACT.—Except as otherwise expressly provided,
17 whenever in this section an amendment is expressed in
18 terms of an amendment to, or repeal of, a section or other
19 provision, the reference is to a section or other provision
20 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
21 301 et seq.).

22 (b) SECTION 301.—Section 301 (21 U.S.C. 331) is
23 amended—

24 (1) by inserting “tobacco product,” in sub-
25 section (a) after “device,”;

1 (2) by inserting “tobacco product,” in sub-
2 section (b) after “device,”;

3 (3) by inserting “tobacco product,” in sub-
4 section (c) after “device,”;

5 (4) by striking “515(f), or 519” in subsection
6 (e) and inserting “515(f), 519, or 909”;

7 (5) by inserting “tobacco product,” in sub-
8 section (g) after “device,”;

9 (6) by inserting “tobacco product,” in sub-
10 section (h) after “device,”;

11 (7) by striking “708, or 721” in subsection (j)
12 and inserting “708, 721, 904, 905, 906, 907, 908,
13 or 909”;

14 (8) by inserting “tobacco product,” in sub-
15 section (k) after “device,”;

16 (9) by striking subsection (p) and inserting the
17 following:

18 “(p) The failure to register in accordance with section
19 510 or 905, the failure to provide any information re-
20 quired by section 510(j), 510(k), 905(i), or 905(j), or the
21 failure to provide a notice required by section 510(j)(2)
22 or 905(J)(2).”;

23 (10) by striking subsection (q)(1) and inserting
24 the following:

25 “(q)(1) The failure or refusal—

1 “(A) to comply with any requirement prescribed
2 under section 518, 520(g), 906(f), or 908;

3 “(B) to furnish any notification or other mate-
4 rial or information required by or under section 519,
5 520(g), 904, 906(f), or 909; or

6 “(C) to comply with a requirement under sec-
7 tion 522 or 912.”;

8 (11) by striking “device,” in subsection (q)(2)
9 and inserting “device or tobacco product,”;

10 (12) by inserting “or tobacco product” in sub-
11 section (r) after “device” each time that it appears;
12 and

13 (13) by adding at the end thereof the following:

14 “(aa) The sale of tobacco products in violation
15 of a no-tobacco-sale order issued under section
16 303(f).”.

17 (c) SECTION 303.—Section 303(f) (21 U.S.C. 333(f))
18 is amended—

19 (1) by amending the caption to read as follows:

20 “(f) CIVIL PENALTIES; NO-TOBACCO-SALE OR-
21 DERS.—”;

22 (2) by inserting “or tobacco products” after
23 “devices” in paragraph (1)(A);

1 (3) by redesignating paragraphs (3), (4), and
2 (5) as paragraphs (4), (5), and (6), and inserting
3 after paragraph (2) the following:

4 “(3) If the Secretary finds that a person has
5 committed repeated violations of restrictions promul-
6 gated under section 906(d) at a particular retail out-
7 let then the Secretary may impose a no-tobacco-sale
8 order on that person prohibiting the sale of tobacco
9 products in that outlet. A no-tobacco-sale order may
10 be imposed with a civil penalty under paragraph
11 (1).”;

12 (4) by striking “assessed” the first time it ap-
13 pears in subparagraph (A) of paragraph (4), as re-
14 designated, and inserting “assessed, or a no-tobacco-
15 sale order may be imposed,”;

16 (5) by striking “penalty” in such subparagraph
17 and inserting “penalty, or upon whom a no-tobacco-
18 order is to be imposed,”;

19 (6) by inserting after “penalty,” in subpara-
20 graph (B) of paragraph (4), as redesignated, the fol-
21 lowing: “or the period to be covered by a no-tobacco-
22 sale order,”;

23 (7) by adding at the end of such subparagraph
24 the following: “A no-tobacco-sale order permanently
25 prohibiting an individual retail outlet from selling to-

1 bacco products shall include provisions that allow
2 the outlet, after a specified period of time, to request
3 that the Secretary compromise, modify, or terminate
4 the order.”;

5 (8) by adding at the end of paragraph (4), as
6 redesignated, the following:

7 “(D) The Secretary may compromise, mod-
8 ify, or terminate, with or without conditions,
9 any no-tobacco-sale order.”;

10 (9) by striking “(3)(A)” in paragraph (5), as
11 redesignated, and inserting “(4)(A)”;

12 (10) by inserting “or the imposition of a no-to-
13 bacco-sale order” after “penalty” the first 2 places
14 it appears in such paragraph;

15 (11) by striking “issued.” in such paragraph
16 and inserting “issued, or on which the no-tobacco-
17 sale order was imposed, as the case may be.”; and

18 (12) by striking “paragraph (4)” each place it
19 appears in paragraph (6), as redesignated, and in-
20 serting “paragraph (5)”.

21 (d) SECTION 304.—Section 304 (21 U.S.C. 334) is
22 amended—

23 (1) by striking “and” before “(D)” in sub-
24 section (a)(2);

1 (2) by striking “device.” in subsection (a)(2)
2 and inserting a comma and “(E) Any adulterated or
3 misbranded tobacco product.”;

4 (3) by inserting “tobacco product,” in sub-
5 section (d)(1) after “device,”;

6 (4) by inserting “or tobacco product” in sub-
7 section (g)(1) after “device” each place it appears;
8 and

9 (5) by inserting “or tobacco product” in sub-
10 section (g)(2)(A) after “device” each place it ap-
11 pears.

12 (e) SECTION 702.—Section 702(a) (21 U.S.C.
13 372(a)) is amended—

14 (1) by inserting “(1)” after “(a)”; and

15 (2) by adding at the end thereof the following:

16 “(2) For a tobacco product, to the extent feasible,
17 the Secretary shall contract with the States in accordance
18 with paragraph (1) to carry out inspections of retailers
19 in connection with the enforcement of this Act.”.

20 (f) SECTION 703.—Section 703 (21 U.S.C. 373) is
21 amended—

22 (1) by inserting “tobacco product,” after “de-
23 vice,” each place it appears; and

24 (2) by inserting “tobacco products,” after “de-
25 vices,” each place it appears.

1 (g) SECTION 704.—Section 704 (21 U.S.C. 374) is
2 amended—

3 (1) by inserting “tobacco products,” in sub-
4 section (a)(1)(A) after “devices,” each place it ap-
5 pears;

6 (2) by inserting “or tobacco products” in sub-
7 section (a)(1)(B) after “restricted devices” each
8 place it appears; and

9 (3) by inserting “tobacco product,” in sub-
10 section (b) after “device,”.

11 (h) SECTION 705.—Section 705(b) (21 U.S.C.
12 375(b)) is amended by inserting “tobacco products,” after
13 “devices,”.

14 (i) SECTION 709.—Section 709 (21 U.S. C. 379) is
15 amended by inserting “or tobacco product” after “device”.

16 (j) SECTION 801.—Section 801 (21 U.S.C. 381) is
17 amended—

18 (1) by inserting “tobacco products,” after “de-
19 vices,” in subsection (a) the first time it appears;

20 (2) by inserting “or subsection (j) of section
21 905” in subsection (a) after “section 510”; and

22 (3) by striking “drugs or devices” each time it
23 appears in subsection (a) and inserting “drugs, de-
24 vices, or tobacco products”;

1 (4) by inserting “tobacco product,” in sub-
2 section (e)(1) after “device,”;

3 (5) by redesignating paragraph (4) of sub-
4 section (e) as paragraph (5) and inserting after
5 paragraph (3), the following:

6 “(4) Paragraph (1) does not apply to any to-
7 bacco product—

8 “(A) which does not comply with an appli-
9 cable requirement of section 907 or 910; or

10 “(B) which under section 906(f) is exempt
11 from either such section.

12 This paragraph does not apply if the Secretary has
13 determined that the exportation of the tobacco prod-
14 uct is not contrary to the public health and safety
15 and has the approval of the country to which it is
16 intended for export or the tobacco product is eligible
17 for export under section 802.”.

18 (k) SECTION 802.—Section 802 (21 U.S.C. 382) is
19 amended—

20 (1) by striking “device—” in subsection (a) and
21 inserting “device or tobacco product—”;

22 (2) by striking “and” after the semicolon in
23 subsection (a)(1)(C);

1 (3) by striking subparagraph (C) of subsection
2 (a)(2) and all that follows in that subsection and in-
3 serting the following:

4 “(C) is a banned device under section 516;

5 or

6 “(3) which, in the case of a tobacco product—

7 “(A) does not comply with an applicable
8 requirement of section 907 or 910; or

9 “(B) under section 906(f) is exempt from

10 either such section,

11 is adulterated, misbranded, and in violation of such
12 sections or Act unless the export of the drug, device,
13 or tobacco product is, except as provided in sub-
14 section (f), authorized under subsection (b), (c), (d),
15 or (e) of this section or section 801(e)(2) or
16 801(e)(4). If a drug, device, or tobacco product de-
17 scribed in paragraph (1), (2), or (3) may be ex-
18 ported under subsection (b) and if an application for
19 such drug or device under section 505, 515, or 910
20 of this Act or section 351 of the Public Health Serv-
21 ice Act (42 U.S.C. 262) was disapproved, the Sec-
22 retary shall notify the appropriate public health offi-
23 cial of the country to which such drug, device, or to-
24 bacco product will be exported of such disapproval.”;

1 (4) by inserting “or tobacco product” in sub-
 2 section (b)(1)(A) after “device” each time it ap-
 3 pears;

4 (5) by inserting “or tobacco product” in sub-
 5 section (c) after “device” and inserting “or section
 6 906(f)” after “520(g).”;

7 (6) by inserting “or tobacco product” in sub-
 8 section (f) after “device” each time it appears; and

9 (7) by inserting “or tobacco product” in sub-
 10 section (g) after “device” each time it appears.

11 (l) SECTION 1003.—Section 1003(d)(2)(C) (as redes-
 12 ignated by section 101(a)) is amended—

13 (1) by striking “and” after “cosmetics,”; and

14 (2) inserting a comma and “and tobacco prod-
 15 ucts” after “devices”.

16 (m) EFFECTIVE DATE FOR NO-TOBACCO-SALE
 17 ORDER AMENDMENTS.—The amendments made by sub-
 18 section (c), other than the amendment made by paragraph
 19 (2) thereof, shall take effect only upon the promulgation
 20 of final regulations by the Secretary—

21 (1) defining the term “repeated violation”, as
 22 used in section 303(f) of the Federal Food, Drug,
 23 and Cosmetic Act (21 U.S.C. 333(f)) as amended by
 24 subsection (c), by identifying the number of viola-

1 tions of particular requirements over a specified pe-
2 riod of time that constitute a repeated violation;

3 (2) providing for notice to the retailer of each
4 violation at a particular retail outlet;

5 (3) providing that a person may not be charged
6 with a violation at a particular retail outlet unless
7 the Secretary has provided notice to the retailer of
8 all previous violations at that outlet;

9 (4) establishing a period of time during which,
10 if there are no violations by a particular retail out-
11 let, that outlet will not considered to have been the
12 site of repeated violations when the next violation oc-
13 curs; and

14 (5) providing that good faith reliance on false
15 identification does not constitute a violation of any
16 minimum age requirement for the sale of tobacco
17 products.

18 **SEC. 103. CONSTRUCTION OF CURRENT REGULATIONS.**

19 (a) IN GENERAL.—The final regulations promulgated
20 by the Secretary in the August 28, 1996, issue of the Fed-
21 eral Register (62 Fed. Reg. 44615-44618) and codified
22 at part 897 of title 21, Code of Federal Regulations, are
23 hereby deemed to be lawful and to have been lawfully pro-
24 mulgated by the Secretary under chapter IX and section
25 701 of the Federal Food, Drug, and Cosmetic Act, as

1 amended by this Act, and not under chapter V of the Fed-
2 eral Food, Drug, and Cosmetic Act. The provisions of part
3 897 that are not in effect on the date of enactment of
4 this Act shall take effect as in such part or upon such
5 later date as determined by the Secretary by order. The
6 Secretary shall amend the designation of authority in such
7 regulations in accordance with this subsection.

8 (b) LIMITATION ON ADVISORY OPINIONS.—As of the
9 date of enactment of this Act, the following documents
10 issued by the Food and Drug Administration shall not
11 constitute advisory opinions under section 10.85(d)(1) of
12 title 21, Code of Federal Regulations, except as they apply
13 to tobacco products, and shall not be cited by the Sec-
14 retary or the Food and Drug Administration as binding
15 precedent.

16 (1) The preamble to the proposed rule in the
17 document entitled “Regulations Restricting the Sale
18 and Distribution of Cigarettes and Smokeless To-
19 bacco Products to Protect Children and Adoles-
20 cents” (60 Fed. Reg. 41314–41372 (August 11,
21 1995)).

22 (2) The document entitled “Nicotine in Ciga-
23 rettes and Smokeless Tobacco Products is a Drug
24 and These Products Are Nicotine Delivery Devices

1 Under the Federal Food, Drug, and Cosmetic Act;;
2 (60 Fed. Reg. 41453–41787 (August 11, 1995)).

3 (3) The preamble to the final rule in the docu-
4 ment entitled “Regulations Restricting the Sale and
5 Distribution of Cigarettes and Smokeless Tobacco to
6 Protect Children and Adolescents” (61 Fed. Reg.
7 44396–44615 (August 28, 1996)).

8 (4) The document entitled “Nicotine in Ciga-
9 rettes and Smokeless Tobacco is a Drug and These
10 Products are Nicotine Delivery Devices Under the
11 Federal Food, Drug, and Cosmetic Act; Jurisdic-
12 tional Determination; (61 Fed. Reg. 44619–45318
13 (August 28, 1996)).

14 **TITLE II—REDUCTIONS IN**
15 **UNDERAGE TOBACCO USE**
16 **Subtitle A—Underage Use**

17 **SEC. 201. FINDINGS.**

18 The Congress finds the following:

19 (1) Reductions in the underage use of tobacco
20 products are critically important to the public
21 health.

22 (2) Achieving this critical public health goal can
23 be substantially furthered by increasing the price of
24 tobacco products to discourage underage use if re-
25 duction targets are not achieved and by creating fi-

1 nancial incentives for manufacturers to discourage
2 youth from using their tobacco products.

3 (3) When reduction targets in underage use are
4 not achieved on an industry-wide basis, the price in-
5 creases that will result from an industry-wide assess-
6 ment will provide an additional deterrence to youth
7 tobacco use.

8 (4) Manufacturer-specific incentives that will be
9 imposed if reduction targets are not met by a manu-
10 facturer provide a strong incentive for each manu-
11 facturer to make all efforts to discourage youth use
12 of its brands and ensure the effectiveness of the in-
13 dustry-wide assessments.

14 **SEC. 202. PURPOSE.**

15 This title is intended to ensure that, in the event that
16 other measures contained in this Act prove to be inad-
17 equate to produce substantial reductions in tobacco use
18 by minors, tobacco companies will pay additional assess-
19 ments. These additional assessments are designed to lower
20 youth tobacco consumption in a variety of ways: by trig-
21 gering further increases in the price of tobacco products,
22 by encouraging tobacco companies to work to meet statu-
23 tory targets for reductions in youth tobacco consumption,
24 and providing support for further reduction efforts.

1 **SEC. 203. GOALS FOR REDUCING UNDERAGE TOBACCO USE.**

2 (a) GOALS.—As part of a comprehensive national to-
 3 bacco control policy, the Secretary, working in cooperation
 4 with State, Tribal, and local governments and the private
 5 sector, shall take all actions under this Act necessary to
 6 ensure that the required percentage reductions in under-
 7 age use of tobacco products set forth in this title are
 8 achieved.

9 (b) REQUIRED REDUCTIONS FOR CIGARETTES.—
 10 With respect to cigarettes, the required percentage reduc-
 11 tion in underage use, as set forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Ciga- rette Use
Years 3 and 4	15 percent
Years 5 and 6	30 percent
Years 7, 8, and 9	50 percent
Year 10 and thereafter	60 percent

12 (c) REQUIRED REDUCTIONS FOR SMOKELESS TO-
 13 BACCO.—With respect to smokeless tobacco products, the
 14 required percentage reduction in underage use, as set
 15 forth in section 204, means—

Calendar Year After Date of Enactment	Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use
Years 3 and 4	12.5 percent
Years 5 and 6	25 percent
Years 7, 8, and 9	35 percent
Year 10 and thereafter	45 percent

1 **SEC. 204. LOOK-BACK ASSESSMENT.**

2 (a) ANNUAL PERFORMANCE SURVEY.—Beginning no
3 later than 1999 and annually thereafter the Secretary
4 shall conduct a survey, in accordance with the methodol-
5 ogy in subsection (d)(1), to determine—

6 (1) the percentage of all young individuals who
7 used a type of tobacco product within the past 30
8 days; and

9 (2) the percentage of young individuals who
10 identify each brand of each type of tobacco product
11 as the usual brand of that type smoked or used
12 within the past 30 days.

13 (b) ANNUAL DETERMINATION.—The Secretary shall
14 make an annual determination, based on the annual per-
15 formance survey conducted under subsection (a), of
16 whether the required percentage reductions in underage
17 use of tobacco products for a year have been achieved for
18 the year involved. The determination shall be based on the
19 annual percent prevalence of the use of tobacco products,
20 for the industry as a whole and of particular manufactur-
21 ers, by young individuals (as determined by the surveys
22 conducted by the Secretary) for the year involved as com-
23 pared to the base incidence percentages.

24 (c) CONFIDENTIALITY OF DATA.—The Secretary
25 may conduct a survey relating to tobacco use involving mi-
26 nors. If the information collected in the course of conduct-

1 ing the annual performance survey results in the individ-
 2 ual supplying the information or described in it to be iden-
 3 tifiable, the information may not be used for any purpose
 4 other than the purpose for which it was supplied unless
 5 that individual (or that individual's guardian) consents to
 6 its use for such other purpose. The information may not
 7 be published or released in any other form if the individual
 8 supplying the information or described in it is identifiable
 9 unless that individual (or that individual's guardian) con-
 10 sents to its publication or release in other form.

11 (d) METHODOLOGY.—

12 (1) IN GENERAL.—The survey required by sub-
 13 section (a) shall—

14 (A) be based on a nationally representative
 15 sample of young individuals;

16 (B) be a household-based, in person survey
 17 (which may include computer-assisted tech-
 18 nology);

19 (C) measure use of each type of tobacco
 20 product within the past 30 days;

21 (D) identify the usual brand of each type
 22 of tobacco product used within the past 30
 23 days; and

24 (E) permit the calculation of the actual
 25 percentage reductions in underage use of a type

1 of tobacco product (or, in the case of the manu-
2 facturer-specific surcharge, the use of a type of
3 tobacco product of a manufacturer) based on
4 the point estimates of the percentage of young
5 individuals reporting use of a type of tobacco
6 product (or, in the case of the manufacturer-
7 specific surcharge, the use of a type of tobacco
8 product of a manufacturer) from the annual
9 performance survey.

10 (2) CRITERIA FOR DEEMING POINT ESTIMATES

11 CORRECT.—Point estimates under paragraph (1)(E)
12 are deemed conclusively to be correct and accurate
13 for calculating actual percentage reductions in un-
14 derage use of a type of tobacco product (or, in the
15 case of the manufacturer-specific surcharge, the use
16 of a type of tobacco product of a particular manu-
17 facturer) for the purpose of measuring compliance
18 with percent reduction targets and calculating sur-
19 charges provided that the precision of estimates
20 (based on sampling error) of the percentage of
21 young individuals reporting use of a type of tobacco
22 product (or, in the case of the manufacturer-specific
23 surcharge, the use of a type of tobacco product of
24 a manufacturer) is such that the 95-percent con-

1 fidence interval around such point estimates is no
2 more than plus or minus 1 percent.

3 (3) SURVEY DEEMED CORRECT, PROPER, AND
4 ACCURATE.—A survey using the methodology re-
5 quired by this subsection is deemed conclusively to
6 be proper, correct, and accurate for purposes of this
7 Act.

8 (4) SECRETARY MAY ADOPT DIFFERENT METH-
9 ODOLOGY.—The Secretary by notice and comment
10 rulemaking may adopt a survey methodology that is
11 different than the methodology described in para-
12 graph (1) if the different methodology is at least as
13 statistically precise as that methodology.

14 (e) INDUSTRY-WIDE NON-ATTAINMENT SUR-
15 CHARGES.—

16 (1) SECRETARY TO DETERMINE INDUSTRY-
17 WIDE NON-ATTAINMENT PERCENTAGE.—The Sec-
18 retary shall determine the industry-wide non-attain-
19 ment percentage for cigarettes and for smokeless to-
20 bacco for each calendar year.

21 (2) NON-ATTAINMENT SURCHARGE FOR CIGA-
22 RETTES.—For each calendar year in which the per-
23 centage reduction in underage use required by sec-
24 tion 203b) is not attained, the Secretary shall assess
25 a surcharge on cigarette manufacturers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	\$80,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	\$400,000,000, plus \$160,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	\$1,200,000,000, plus \$240,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	\$4,000,000,000

1 (3) NON-ATTAINMENT SURCHARGE FOR SMOKE-
2 LESS TOBACCO.—For each year in which the per-
3 centage reduction in underage use required by sec-
4 tion 203c) is not attained, the Secretary shall assess
5 a surcharge on smokeless tobacco product manufac-
6 turers as follows:

If the non-attainment percentage is:	The surcharge is:
Not more than 5 percent	\$8,000,000 multiplied by the non-attainment percentage
More than 5% but not more than 10%	\$40,000,000, plus \$16,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%
More than 10%	\$120,000,000, plus \$24,000,000 multiplied by the non-attainment percentage in excess of 10%
More than 21.6%	\$400,000,000

7 (4) STRICT LIABILITY; JOINT AND SEVERAL LI-
8 ABILITY.—Liability for any surcharge imposed under
9 subsection (e) shall be—
10 (A) strict liability; and
11 (B) joint and several liability—

1 (i) among all cigarette manufacturers
2 for surcharges imposed under subsection
3 (e)(2); and

4 (ii) among all smokeless tobacco man-
5 ufacturers for surcharges imposed under
6 subsection (e)(3).

7 (5) SURCHARGE LIABILITY AMONG MANUFAC-
8 TURERS.—A tobacco product manufacturer shall be
9 liable under this subsection to one or more other
10 manufacturers if the plaintiff tobacco product manu-
11 facturer establishes by a preponderance of the evi-
12 dence that the defendant tobacco product manufac-
13 turer, through its acts or omissions, was responsible
14 for a disproportionate share of the non-attainment
15 surcharge as compared to the responsibility of the
16 plaintiff manufacturer.

17 (6) EXEMPTIONS FOR SMALL MANUFACTUR-
18 ERS.—

19 (A) ALLOCATION BY MARKET SHARE.—
20 The Secretary shall make such allocations ac-
21 cording to each manufacturer's share of the do-
22 mestic cigarette or domestic smokeless tobacco
23 market, as appropriate, in the year for which
24 the surcharge is being assessed, based on actual
25 Federal excise tax payments.

1 (B) EXEMPTION.—In any year in which a
2 surcharge is being assessed, the Secretary shall
3 exempt from payment any tobacco product
4 manufacturer with less than 1 percent of the
5 domestic market share for a specific category of
6 tobacco product unless the Secretary finds that
7 the manufacturer's products are used by under-
8 age individuals at a rate equal to or greater
9 than the manufacturer's total market share for
10 the type of tobacco product.

11 (f) MANUFACTURER-SPECIFIC SURCHARGES.—

12 (1) REQUIRED PERCENTAGE REDUCTIONS.—

13 Each manufacturer which manufactured a brand or
14 brands of tobacco product on or before the date of
15 the enactment of this Act shall reduce the percent-
16 age of young individuals who use such manufactur-
17 er's brand or brands as their usual brand in accord-
18 ance with the required percentage reductions de-
19 scribed under subsections (b) (with respect to ciga-
20 rettes) and (c) (with respect to smokeless tobacco).

21 (2) APPLICATION TO LESS POPULAR BRANDS.—

22 Each manufacturer which manufactured a brand or
23 brands of tobacco product on or before the date of
24 the enactment of this Act for which the base inci-
25 dence percentage is equal to or less than the de

1 minimis level shall ensure that the percent preva-
2 lence of young individuals who use the manufactur-
3 er's tobacco products as their usual brand remains
4 equal to or less than the de minimis level described
5 in paragraph (4).

6 (3) NEW ENTRANTS.—Each manufacturer of a
7 tobacco product which begins to manufacture a to-
8 bacco product after the date of the enactment of this
9 Act shall ensure that the percent prevalence of
10 young individuals who use the manufacturer's to-
11 bacco products as their usual brand is equal to or
12 less than the de minimis level.

13 (4) DE MINIMIS LEVEL DEFINED.—The de
14 minimis level is equal to 1 percent prevalence of the
15 use of each manufacturer's brands of tobacco prod-
16 uct by young individuals (as determined on the basis
17 of the annual performance survey conducted by the
18 Secretary) for a year.

19 (5) TARGET REDUCTION LEVELS.—

20 (A) EXISTING MANUFACTURERS.— For
21 purposes of this section, the target reduction
22 level for each type of tobacco product for a year
23 for a manufacturer is the product of the re-
24 quired percentage reduction for a type of to-
25 bacco product for a year and the manufacturers

1 base incidence percentage for such tobacco
2 product.

3 (B) NEW MANUFACTURERS; MANUFACTUR-
4 ERS WITH LOW BASE INCIDENCE PERCENT-
5 AGES.—With respect to a manufacturer which
6 begins to manufacture a tobacco product after
7 the date of the enactment of this Act or a man-
8 ufacturer for which the baseline level as meas-
9 ured by the annual performance survey is equal
10 to or less than the de minimis level described in
11 paragraph (4), the base incidence percentage is
12 the de minimis level, and the required percent-
13 age reduction in underage use for a type of to-
14 bacco product with respect to a manufacturer
15 for a year shall be deemed to be the number of
16 percentage points necessary to reduce the ac-
17 tual percent prevalence of young individuals
18 identifying a brand of such tobacco product of
19 such manufacturer as the usual brand smoked
20 or used for such year to the de minimis level.

21 (6) SURCHARGE AMOUNT.—

22 (A) IN GENERAL.—If the Secretary deter-
23 mines that the required percentage reduction in
24 use of a type of tobacco product has not been
25 achieved by such manufacturer for a year, the

1 Secretary shall impose a surcharge on such
2 manufacturer under this paragraph.

3 (B) AMOUNT.—The amount of the manu-
4 facturer-specific surcharge for a type of tobacco
5 product for a year under this paragraph is
6 \$1,000, multiplied by the number of young indi-
7 viduals for which such firm is in noncompliance
8 with respect to its target reduction level.

9 (C) DETERMINATION OF NUMBER OF
10 YOUNG INDIVIDUALS.—For purposes of sub-
11 paragraph (B) the number of young individuals
12 for which a manufacturer is in noncompliance
13 for a year shall be determined by the Secretary
14 from the annual performance survey and shall
15 be calculated based on the estimated total num-
16 ber of young individuals in such year and the
17 actual percentage prevalence of young individ-
18 uals identifying a brand of such tobacco prod-
19 uct of such manufacturer as the usual brand
20 smoked or used in such year as compared to
21 such manufacturer's target reduction level for
22 the year.

23 (7) DE MINIMIS RULE.—The Secretary may not
24 impose a surcharge on a manufacturer for a type of
25 tobacco product for a year if the Secretary deter-

1 mines that actual percent prevalence of young indi-
2 viduals identifying that manufacturer's brands of
3 such tobacco product as the usual products smoked
4 or used for such year is less than 1 percent.

5 (g) SURCHARGES TO BE ADJUSTED FOR INFLA-
6 TION.—

7 (1) IN GENERAL.—Beginning with the fourth
8 calendar year after the date of enactment of this
9 Act, each dollar amount in the tables in subsections
10 (e)(2), (e)(3), and (f)(6)(B) shall be increased by the
11 inflation adjustment.

12 (2) INFLATION ADJUSTMENT.—For purposes of
13 paragraph (1), the inflation adjustment for any cal-
14 endar year is the percentage (if any) by which—

15 (A) the CPI for the preceding calendar
16 year, exceeds

17 (B) the CPI for the calendar year 1998.

18 (3) CPI.—For purposes of paragraph (2), the
19 CPI for any calendar year is the average of the Con-
20 sumer Price Index for all-urban consumers published
21 by the Department of Labor.

22 (4) ROUNDING.—If any increase determined
23 under paragraph (1) is not a multiple of \$1,000, the
24 increase shall be rounded to the nearest multiple of
25 \$1,000.

1 (h) METHOD OF SURCHARGE ASSESSMENT.—The
2 Secretary shall assess a surcharge for a specific calendar
3 year on or before May 1 of the subsequent calendar year.
4 Surcharge payments shall be paid on or before July 1 of
5 the year in which they are assessed. The Secretary may
6 establish, by regulation, interest at a rate up to 3 times
7 the prevailing prime rate at the time the surcharge is as-
8 sessed, and additional charges in an amount up to 3 times
9 the surcharge, for late payment of the surcharge.

10 (i) BUSINESS EXPENSE DEDUCTION.—Any sur-
11 charge paid by a tobacco product manufacturer under this
12 section shall not be deductible as an ordinary and nec-
13 essary business expense or otherwise under the Internal
14 Revenue Code of 1986.

15 (j) APPEAL RIGHTS.—The amount of any surcharge
16 is committed to the sound discretion of the Secretary and
17 shall be subject to judicial review by the United States
18 Court of Appeals for the District of Columbia Circuit,
19 based on the arbitrary and capricious standard of section
20 706(2)(A) of title 5, United States Code. Notwithstanding
21 any other provisions of law, no court shall have authority
22 to stay any surcharge payments due the Secretary under
23 this Act pending judicial review.

24 (k) RESPONSIBILITY FOR AGENTS.—In any action
25 brought under this subsection, a tobacco product manufac-

1 turer shall be held responsible for any act or omission of
2 its attorneys, advertising agencies, or other agents that
3 contributed to that manufacturer's responsibility for the
4 surcharge assessed under this section.

5 **SEC. 205. DEFINITIONS.**

6 In this subtitle:

7 (1) **BASE INCIDENCE PERCENTAGE.**—The term
8 “base incidence percentage” means, with respect to
9 each type of tobacco product, the percentage of
10 young individuals determined to have used such to-
11 bacco product in the first annual performance survey
12 for 1999.

13 (2) **MANUFACTURERS BASE INCIDENCE PER-**
14 **CENTAGE.**—The term “manufacturers base incidence
15 percentage” is, with respect to each type of tobacco
16 product, the percentage of young individuals deter-
17 mined to have identified a brand of such tobacco
18 product of such manufacturer as the usual brand
19 smoked or used in the first annual performance sur-
20 vey for 1999.

21 (3) **YOUNG INDIVIDUALS.**—The term “young
22 individuals” means individuals who are over 11
23 years of age and under 18 years of age.

1 (4) CIGARETTE MANUFACTURERS.—The term
2 “cigarette manufacturers” means manufacturers of
3 cigarettes sold in the United States.

4 (5) NON-ATTAINMENT PERCENTAGE FOR CIGA-
5 RETTES.—The term “non-attainment percentage for
6 cigarettes” means the number of percentage points
7 yielded—

8 (A) for a calendar year in which the per-
9 cent incidence of underage use of cigarettes is
10 less than the base incidence percentage, by sub-
11 tracting—

12 (i) the percentage by which the per-
13 cent incidence of underage use of ciga-
14 rettes in that year is less than the base in-
15 cidence percentage, from

16 (ii) the required percentage reduction
17 applicable in that year; and

18 (B) for a calendar year in which the per-
19 cent incidence of underage use of cigarettes is
20 greater than the base incidence percentage,
21 adding—

22 (i) the percentage by which the per-
23 cent incidence of underage use of ciga-
24 rettes in that year is greater than the base
25 incidence percentage; and

1 (ii) the required percentage reduction
2 applicable in that year.

3 (6) NON-ATTAINMENT PERCENTAGE FOR
4 SMOKELESS TOBACCO PRODUCTS.—The term “non-
5 attainment percentage for smokeless tobacco prod-
6 ucts” means the number of percentage points yield-
7 ed—

8 (A) for a calendar year in which the per-
9 cent incidence of underage use of smokeless to-
10 bacco products is less than the base incidence
11 percentage, by subtracting—

12 (i) the percentage by which the per-
13 cent incidence of underage use of smoke-
14 less tobacco products in that year is less
15 than the base incidence percentage, from

16 (ii) the required percentage reduction
17 applicable in that year; and

18 (B) for a calendar year in which the per-
19 cent incidence of underage use of smokeless to-
20 bacco products is greater than the base inci-
21 dence percentage, by adding—

22 (i) the percentage by which the per-
23 cent incidence of underage use of smoke-
24 less tobacco products in that year is great-
25 er than the base incidence percentage; and

1 (ii) the required percentage reduction
2 applicable in that year.

3 (7) SMOKELESS TOBACCO PRODUCT MANUFAC-
4 TURERS.—The term “smokeless tobacco product
5 manufacturers” means manufacturers of smokeless
6 tobacco products sold in the United States.

7 **Subtitle B—State Retail Licensing**
8 **and Enforcement Incentives**

9 **SEC. 231. STATE RETAIL LICENSING AND ENFORCEMENT**
10 **BLOCK GRANTS.**

11 (a) IN GENERAL.—The Secretary shall make State
12 retail licensing and enforcement block grants in accord-
13 ance with the provisions of this section. There are author-
14 ized to be appropriated to the Secretary from the National
15 Tobacco Trust Fund \$200,000,000 for each fiscal year to
16 carry out the provisions of this section.

17 (b) REQUIREMENTS.—

18 (1) ESTABLISHMENT.—The Secretary shall pro-
19 vide a block grant, based on population, under this
20 subtitle to each State that has in effect a law that—

21 (A) provides for the licensing of entities
22 engaged in the sale or distribution of tobacco
23 products directly to consumers;

1 (B) makes it illegal to sell or distribute to-
2 bacco products to individuals under 18 years of
3 age; and

4 (C) meets the standards described in this
5 section.

6 (2) STATE AGREEMENT REQUIRED.—In order
7 to receive a block grant under this section, a State—

8 (A) shall enter into an agreement with the
9 Secretary to assume responsibilities for the im-
10 plementation and enforcement of a tobacco re-
11 tailer licensing program;

12 (B) shall prohibit retailers from selling or
13 otherwise distributing tobacco products to indi-
14 viduals under 18 years of age in accordance
15 with the Youth Access Restrictions regulations
16 promulgated by the Secretary (21 C.F.R.
17 897.14(a) and (b));

18 (C) shall make available to appropriate
19 Federal agencies designated by the Secretary
20 requested information concerning retail estab-
21 lishments involved in the sale or distribution of
22 tobacco products to consumers; and

23 (D) shall establish to the satisfaction of
24 the Secretary that it has a law or regulation
25 that includes the following:

1 (i) LICENSURE; SOURCES; AND NO-
2 TICE.—A requirement for a State license
3 for each retail establishment involved in
4 the sale or distribution of tobacco products
5 to consumers. A requirement that a retail
6 establishment may purchase tobacco prod-
7 ucts only from Federally-licensed manufac-
8 turers, importers, or wholesalers. A pro-
9 gram under which notice is provided to
10 such establishments and their employees of
11 all licensing requirements and responsibil-
12 ities under State and Federal law relating
13 to the retail distribution of tobacco prod-
14 ucts.

15 (ii) PENALTIES.—

16 (I) CRIMINAL.—Criminal pen-
17 alties for the sale or distribution of to-
18 bacco products to a consumer without
19 a license.

20 (II) CIVIL.—Civil penalties for
21 the sale or distribution of tobacco
22 products in violation of State law, in-
23 cluding graduated fines and suspen-
24 sion or revocation of licenses for re-
25 peated violations.

1 (III) OTHER.—Other programs,
2 including such measures as fines, sus-
3 pension of driver’s license privileges,
4 or community service requirements,
5 for underage youths who possess, pur-
6 chase, or attempt to purchase tobacco
7 products.

8 (iii) JUDICIAL REVIEW.—Judicial re-
9 view procedures for an action of the State
10 suspending, revoking, denying, or refusing
11 to renew any license under its program.

12 (c) ENFORCEMENT.—

13 (1) UNDERTAKING.—Each State that receives a
14 grant under this subtitle shall undertake to enforce
15 compliance with its tobacco retailing licensing pro-
16 gram in a manner that can reasonably be expected
17 to reduce the sale and distribution of tobacco prod-
18 ucts to individuals under 18 years of age. If the Sec-
19 retary determines that a State is not enforcing the
20 law in accordance with such an undertaking, the
21 Secretary may withhold a portion of any unobligated
22 funds under this section otherwise payable to that
23 State.

1 (2) ACTIVITIES AND REPORTS REGARDING EN-
2 FORCEMENT.—A State that receives a grant under
3 this subtitle shall—

4 (A) conduct monthly random, unannounced
5 inspections of sales or distribution outlets in the
6 State to ensure compliance with a law prohibit-
7 ing sales of tobacco products to individuals
8 under 18 years of age;

9 (B) annually submit to the Secretary a re-
10 port describing in detail—

11 (i) the activities carried out by the
12 State to enforce underage access laws dur-
13 ing the fiscal year;

14 (ii) the extent of success the State has
15 achieved in reducing the availability of to-
16 bacco products to individuals under the
17 age of 18 years;

18 (iii) how the inspections described in
19 subparagraph (A) were conducted and the
20 methods used to identify outlets, with ap-
21 propriate protection for the confidentiality
22 of information regarding the timing of in-
23 spections and other investigative tech-
24 niques whose effectiveness depends on con-
25 tinued confidentiality; and

1 (iv) the identity of the single State
2 agency designated by the Governor of the
3 State to be responsible for the implementa-
4 tion of the requirements of this section.

5 (3) MINIMUM INSPECTION STANDARDS.—In-
6 spections conducted by the State shall be conducted
7 by the State in such a way as to ensure a scientif-
8 ically sound estimate (with a 95 percent confidence
9 interval that such estimates are accurate to within
10 plus or minus 3 percentage points), using an accu-
11 rate list of retail establishments throughout the
12 State. Such inspections shall cover a range of outlets
13 (not preselected on the basis of prior violations) to
14 measure overall levels of compliance as well as to
15 identify violations. The sample must reflect the dis-
16 tribution of the population under the age of 18 years
17 throughout the State and the distribution of the out-
18 lets throughout the State accessible to youth. Except
19 as provided in this paragraph, any reports required
20 by this paragraph shall be made public. As used in
21 this paragraph, the term “outlet” refers to any loca-
22 tion that sells at retail or otherwise distributes to-
23 bacco products to consumers, including to locations
24 that sell such products over-the-counter.

25 (d) NONCOMPLIANCE.—

1 (1) INSPECTIONS.—The Secretary shall with-
2 hold from any State that fails to meet the require-
3 ments of subsection (b) in any calendar year an
4 amount equal to 5 percent of the amount otherwise
5 payable under this subtitle to that State for the next
6 fiscal year.

7 (2) COMPLIANCE RATE.—The Secretary shall
8 withhold from any State that fails to demonstrate a
9 compliance rate of—

10 (A) at least the annual compliance targets
11 that were negotiated with the Secretary under
12 section 1926 of the Public Health Service Act
13 (42 U.S.C. 300x—26) as such section was in
14 effect before its repeal by this Act through the
15 third fiscal year after the date of enactment of
16 this Act;

17 (B) at least 80 percent in the fourth fiscal
18 year after such date;

19 (C) at least 85 percent in the fifth and
20 sixth fiscal years after such date; and

21 (D) at least 90 percent in every fiscal year
22 beginning with the seventh fiscal year after
23 such date,

24 an amount equal to one percentage point for each
25 percentage point by which the State failed to meet

1 the percentage set forth in this subsection for that
2 year from the amount otherwise payable under this
3 subtitle for that fiscal year.

4 (e) RELEASE AND DISBURSEMENT.—

5 (1) Upon notice from the Secretary that an
6 amount payable under this section has been ordered
7 withheld under subsection (d), a State may petition
8 the Secretary for a release and disbursement of up
9 to 75 percent of the amount withheld, and shall give
10 timely written notice of such petition to the attorney
11 general of that State and to all tobacco product
12 manufacturers.

13 (2) The agency shall conduct a hearing on such
14 a petition, in which the attorney general of the State
15 may participate and be heard.

16 (3) The burden shall be on the State to prove,
17 by a preponderance of the evidence, that the release
18 and disbursement should be made. The Secretary's
19 decision on whether to grant such a release, and the
20 amount of any such disbursement, shall be based on
21 whether—

22 (A) the State presents scientifically sound
23 survey data showing that the State is making
24 significant progress toward reducing the use of

1 tobacco products by individuals who have not
2 attained the age of 18 years;

3 (B) the State presents scientifically-based
4 data showing that it has progressively decreased
5 the availability of tobacco products to such indi-
6 viduals;

7 (C) the State has acted in good faith and
8 in full compliance with this Act, and any rules
9 or regulations promulgated under this Act;

10 (D) the State provides evidence that it
11 plans to improve enforcement of these laws in
12 the next fiscal year; and

13 (E) any other relevant evidence.

14 (4) A State is entitled to interest on any with-
15 held amount released at the average United States
16 52-Week Treasury Bill rate for the period between
17 the withholding of the amount and its release.

18 (5) Any State attorney general or tobacco product
19 manufacturer aggrieved by a final decision on a peti-
20 tion filed under this subsection may seek judicial re-
21 view of such decision within 30 days in the United
22 States Court of Appeals for the District of Columbia
23 Circuit. Unless otherwise specified in this Act, judi-
24 cial review under this section shall be governed by

1 sections 701 through 706 of title 5, United States
2 Code.

3 (6) No stay or other injunctive relief enjoining
4 a reduction in a State's allotment pending appeal or
5 otherwise may be granted by the Secretary or any
6 court.

7 (f) NON-PARTICIPATING STATES LICENSING RE-
8 QUIREMENTS.—For retailers in States which have not es-
9 tablished a licensing program under subsection (a), the
10 Secretary shall promulgate regulations establishing Fed-
11 eral retail licensing for retailers engaged in tobacco sales
12 to consumers in those States. The Secretary may enter
13 into agreements with States for the enforcement of those
14 regulations. A State that enters into such an agreement
15 shall receive a grant under this section to reimburse it for
16 costs incurred in carrying out that agreement.

17 (g) DEFINITION.—For the purposes of this section,
18 the term “first applicable fiscal year” means the first fis-
19 cal year beginning after the fiscal year in which funding
20 is made available to the States under this section.

21 **SEC. 232. BLOCK GRANTS FOR COMPLIANCE BONUSES.**

22 (a) IN GENERAL.—The Secretary shall make block
23 grants to States determined to be eligible under subsection
24 (b) in accordance with the provisions of this section. There
25 are authorized to be appropriated to the Secretary from

1 the National Tobacco Trust Fund \$100,000,000 for each
2 fiscal year to carry out the provisions of this section.

3 (b) ELIGIBLE STATES.—To be eligible to receive a
4 grant under subsection (a), a State shall—

5 (1) prepare and submit to the Secretary an ap-
6 plication, at such time, in such manner, and contain-
7 ing such information as the Secretary may require;
8 and

9 (2) with respect to the year involved, dem-
10 onstrate to the satisfaction of the Secretary that
11 fewer than 5 percent of all individuals under 18
12 years of age who attempt to purchase tobacco prod-
13 ucts in the State in such year are successful in such
14 purchase.

15 (c) PAYOUT.—

16 (1) PAYMENT TO STATE.—If one or more
17 States are eligible to receive a grant under this sec-
18 tion for any fiscal year, the amount payable for that
19 fiscal year shall be apportioned among such eligible
20 States on the basis of population.

21 (2) YEAR IN WHICH NO STATE RECEIVES
22 GRANT.—If in any fiscal year no State is eligible to
23 receive a grant under this section, then the Sec-
24 retary may use not more than 25 percent of the
25 amount appropriated to carry out this section for

1 that fiscal year to support efforts to improve State
 2 and local enforcement of laws regulating the use,
 3 sale, and distribution of tobacco products to individ-
 4 uals under the age of 18 years.

5 (3) AMOUNTS AVAILABLE WITHOUT FISCAL
 6 YEAR LIMITATION.—Any amount appropriated under
 7 this section remaining unexpended and unobligated
 8 at the end of a fiscal year shall remain available for
 9 obligation and expenditure in the following fiscal
 10 year.

11 **SEC. 233. CONFORMING CHANGE.**

12 Section 1926 of the Public Health Service Act (42
 13 U.S.C. 300x—26) is hereby repealed.

14 **Subtitle C—Tobacco Use Preven-**
 15 **tion and Cessation Initiatives**

16 **SEC. 261. TOBACCO USE PREVENTION AND CESSATION INI-**
 17 **TIATIVES.**

18 Title XIX of the Public Health Service Act (42
 19 U.S.C. 300w et seq.) is amended by adding at the end
 20 the following:

1 “PART D—TOBACCO USE PREVENTION AND CESSATION
 2 INITIATIVES

3 “SUBPART I—CESSATION AND COMMUNITY-BASED
 4 PREVENTION BLOCK GRANTS

5 “**SEC. 1981. FUNDING FROM TOBACCO SETTLEMENT TRUST**
 6 **FUND.**

7 “(a) IN GENERAL.—From amounts contained in the
 8 Public Health Allocation Account under section
 9 451(b)(2)(A) and (C) of the National Tobacco Policy and
 10 Youth Smoking Reduction Act for a fiscal year, there are
 11 authorized to be appropriated (under subsection (d) of
 12 such section) to carry out this subpart—

13 “(1) for cessation activities, the amounts appro-
 14 priated under section 451(b)(2)(A); and

15 “(2) for prevention and education activities, the
 16 amounts appropriated under section 451(b)(2)(C).

17 “(b) NATIONAL ACTIVITIES.—

18 “(1) Not more than 10 percent of the amount
 19 made available for any fiscal year under subsection
 20 (a) shall be made available to the Secretary to carry
 21 out activities under section 1981B and 1981D(d).

22 “(2) Not more than 10 percent of the amount
 23 available for any fiscal year under subsection (a)(1)
 24 shall be available to the Secretary to carry out ac-
 25 tivities under section 1981D(d).

1 **“SEC. 1981A. ALLOTMENTS.**

2 “(a) AMOUNT.—

3 “(1) IN GENERAL.—From the amount made
4 available under section 1981 for any fiscal year the
5 Secretary, acting through the Director of the Cen-
6 ters for Disease Control and Prevention (referred to
7 in this subpart as the ‘Director’), shall allot to each
8 State an amount based on a formula to be developed
9 by the Secretary that is based on the tobacco pre-
10 vention and cessation needs of each State including
11 the needs of the State’s minority populations.

12 “(2) MINIMUM AMOUNT.—In determining the
13 amount of allotments under paragraph (1), the Sec-
14 retary shall ensure that no State receives less than
15 ½ of 1 percent of the amount available under sec-
16 tion 1981(a) for the fiscal year involved.

17 “(b) REALLOTMENT.—To the extent that amounts
18 made available under section 1981 for a fiscal year are
19 not otherwise allotted to States because—

20 “(1) 1 or more States have not submitted an
21 application or description of activities in accordance
22 with section 1981D for the fiscal year;

23 “(2) 1 or more States have notified the Sec-
24 retary that they do not intend to use the full amount
25 of their allotment; or

1 “(3) the Secretary has determined that the
2 State is not in compliance with this subpart, and
3 therefore is subject to penalties under section
4 1981D(g);

5 such excess amount shall be reallocated among each of the
6 remaining States in proportion to the amount otherwise
7 allotted to such States for the fiscal year involved without
8 regard to this subsection.

9 “(c) PAYMENTS.—

10 “(1) IN GENERAL.—The Secretary, acting
11 through the Director of the Centers for Disease
12 Control and Prevention, shall utilize the funds made
13 available under this section to make payments to
14 States under allotments under this subpart as pro-
15 vided for under section 203 of the Intergovernmental
16 Cooperation Act of 1968.

17 “(2) FEDERAL GRANTEEES.—From amounts
18 available under section 1981(b)(2), the Secretary
19 may make grants, or supplement existing grants, to
20 entities eligible for funds under the programs de-
21 scribed in section 1981C(d)(1) and (10) to enable
22 such entities to carry out smoking cessation activi-
23 ties under this subpart, except not less than 25 per-
24 cent of this amount shall be used for the program
25 described in 1981C(d)(6).

1 “(3) AVAILABILITY OF FUNDS.—Any amount
2 paid to a State for a fiscal year under this subpart
3 and remaining unobligated at the end of such year
4 shall remain available to such State for the next fis-
5 cal year for the purposes for which such payment
6 was made.

7 “(d) REGULATIONS.—Not later than 9 months after
8 the date of enactment of this part, the Secretary shall pro-
9 mulgate regulations to implement this subpart. This sub-
10 part shall take effect regardless of the date on which such
11 regulations are promulgated.

12 **“SEC. 1981B. TECHNICAL ASSISTANCE AND PROVISION OF**
13 **SUPPLIES AND SERVICES IN LIEU OF FUNDS.**

14 “(a) TECHNICAL ASSISTANCE.—The Secretary, act-
15 ing through the Director of the Centers for Disease Con-
16 trol and Prevention, shall, without charge to a State re-
17 ceiving an allotment under section 1981A, provide to such
18 State (or to any public or nonprofit private entity within
19 the State) technical assistance and training with respect
20 to the planning, development, operation, and evaluation of
21 any program or service carried out pursuant to the pro-
22 gram involved. The Secretary may provide such technical
23 assistance or training directly, through contract, or
24 through grants.

1 “(b) PROVISION OF SUPPLIES AND SERVICE IN LIEU
2 OF GRANT FUNDS.—The Secretary, at the request of a
3 State, may reduce the amount of payments to the State
4 under section 1981A(c) by—

5 “(1) the fair market value of any supplies or
6 equipment furnished by the Secretary to the State;
7 and

8 “(2) the amount of the pay, allowances, and
9 travel expenses of any officer or employee of the
10 Federal Government when detailed to the State and
11 the amount of any other costs incurred in connection
12 with the detail of such officer or employee;

13 when the furnishing of such supplies or equipment or the
14 detail of such an officer or employee is for the convenience
15 of and at the request of the State and for the purpose
16 of conducting activities described in section 1981C. The
17 amount by which any payment is so reduced shall be avail-
18 able for payment by the Secretary of the costs incurred
19 in furnishing the supplies or equipment or in detailing the
20 personnel, on which reduction of the payment is based,
21 and the amount shall be deemed to be part of the payment
22 and shall be deemed to have been paid to the State.

1 **“SEC. 1981C. PERMITTED USERS OF CESSATION BLOCK**
2 **GRANTS AND OF COMMUNITY-BASED PRE-**
3 **VENTION BLOCK GRANTS.**

4 “(a) TOBACCO USE CESSATION ACTIVITIES.—Except
5 as provided in subsections (d) and (e), amounts described
6 in subsection (a)(1) may be used for the following:

7 “(1) Evidence-based cessation activities de-
8 scribed in the plan of the State, submitted in accord-
9 ance with section 1981D, including—

10 “(A) evidence-based programs designed to
11 assist individuals, especially young people and
12 minorities who have been targeted by tobacco
13 product manufacturers, to quit their use of to-
14 bacco products;

15 “(B) training in cessation intervention
16 methods for health plans and health profes-
17 sionals, including physicians, nurses, dentists,
18 health educators, public health professionals,
19 and other health care providers;

20 “(C) programs to encourage health insur-
21 ers and health plans to provide coverage for evi-
22 dence-based tobacco use cessation interventions
23 and therapies, except that the use of any funds
24 under this clause to offset the cost of providing
25 a smoking cessation benefit shall be on a tem-
26 porary demonstration basis only;

1 “(D) culturally and linguistically appro-
2 priate programs targeted toward minority and
3 low-income individuals, individuals residing in
4 medically underserved areas, uninsured individ-
5 uals, and pregnant women;

6 “(E) programs to encourage employer-
7 based wellness programs to provide evidence-
8 based tobacco use cessation intervention and
9 therapies; and

10 “(F) programs that target populations
11 whose smoking rate is disproportionately high
12 in comparison to the smoking rate population-
13 wide in the State.

14 “(2) Planning, administration, and educational
15 activities related to the activities described in para-
16 graph (1).

17 “(3) The monitoring and evaluation of activities
18 carried out under paragraphs (1) and (2), and re-
19 porting and disseminating resulting information to
20 health professionals and the public.

21 “(4) Targeted pilot programs with evaluation
22 components to encourage innovation and experimen-
23 tation with new methodologies.

24 “(b) STATE AND COMMUNITY ACTION ACTIVITIES.—
25 Except as provided in subsections (d) and (e), amounts

1 described in subsection (a)(2) may be used for the follow-
2 ing:

3 “(1) Evidence-based activities for tobacco use
4 prevention and control described in the plan of the
5 State, submitted in accordance with section 1981D,
6 including—

7 “(A) State and community initiatives;

8 “(B) community-based prevention pro-
9 grams, similar to programs currently funded by
10 NIH;

11 “(C) programs focused on those popu-
12 lations within the community that are most at
13 risk to use tobacco products or that have been
14 targeted by tobacco advertising or marketing;

15 “(D) school programs to prevent and re-
16 duce tobacco use and addiction, including school
17 programs focused in those regions of the State
18 with high smoking rates and targeted at popu-
19 lations most at risk to start smoking;

20 “(E) culturally and linguistically appro-
21 priate initiatives targeted towards minority and
22 low-income individuals, individuals residing in
23 medically underserved areas, and women of
24 child-bearing age;

1 “(F) the development and implementation
2 of tobacco-related public health and health pro-
3 motion campaigns and public policy initiatives;

4 “(G) assistance to local governmental enti-
5 ties within the State to conduct appropriate
6 anti-tobacco activities.

7 “(H) strategies to ensure that the State’s
8 smoking prevention activities include minority,
9 low-income, and other undeserved populations;
10 and

11 “(I) programs that target populations
12 whose smoking rate is disproportionately high
13 in comparison to the smoking rate population-
14 wide in the State.

15 “(2) Planning, administration, and educational
16 activities related to the activities described in para-
17 graph (1).

18 “(3) The monitoring and evaluation of activities
19 carried out under paragraphs (1) and (2), and re-
20 porting and disseminating resulting information to
21 health professionals and the public.

22 “(4) Targeted pilot programs with evaluation
23 components to encourage innovation and experimen-
24 tation with new methodologies.

1 “(c) COORDINATION.—Tobacco use cessation and
2 community-based prevention activities permitted under
3 subsections (b) and (c) may be conducted in conjunction
4 with recipients of other Federally—funded programs with-
5 in the State, including—

6 “(1) the special supplemental food program
7 under section 17 of the Child Nutrition Act of 1966
8 (42 U.S.C. 1786);

9 “(2) the Maternal and Child Health Services
10 Block Grant program under title V of the Social Se-
11 curity Act (42 U.S.C. 701 et seq.);

12 “(3) the State Children’s Health Insurance
13 Program of the State under title XXI of the Social
14 Security Act (42 U.S.C. 13397aa et seq.);

15 “(4) the school lunch program under the Na-
16 tional School Lunch Act (42 U.S.C. 1751 et seq.);

17 “(5) an Indian Health Service Program;

18 “(6) the community, migrant, and homeless
19 health centers program under section 330 of the
20 Public Health Service Act (42 U.S.C. 254b);

21 “(7) state-initiated smoking cessation programs
22 that include provisions for reimbursing individuals
23 for medications or therapeutic techniques;

24 “(8) the substance abuse and mental health
25 services block grant program, and the preventive

1 health services block grant program, under title XIX
2 of the Public Health Service Act (42 U.S.C. 300w
3 et seq.);

4 “(9) the Medicaid program under title XIX of
5 the Social Security Act (42 U.S.C. 1396 et seq.);
6 and

7 “(10) programs administered by the Depart-
8 ment of Defense and the Department of Veterans
9 Affairs.

10 “(d) LIMITATION.—A State may not use amounts
11 paid to the State under section 1981A(c) to—

12 “(1) make cash payments except with appro-
13 priate documentation to intended recipients of to-
14 bacco use cessation services;

15 “(2) fund educational, recreational, or health
16 activities not based on scientific evidence that the
17 activity will prevent smoking or lead to success of
18 cessation efforts

19 “(3) purchase or improve land, purchase, con-
20 struct, or permanently improve (other than minor
21 remodeling) any building or other facility, or pur-
22 chase major medical equipment;

23 “(4) satisfy any requirement for the expendi-
24 ture of non-Federal funds as a condition of the re-
25 ceipt of Federal funds; or

1 “(5) provide financial assistance to any entity
2 other than a public or nonprofit private entity or a
3 private entity consistent with subsection (b)(1)(C).

4 This subsection shall not apply to the support of targeted
5 pilot programs that use innovative and experimental new
6 methodologies and include an evaluation component.

7 “(e) ADMINISTRATION.—Not more than 5 percent of
8 the allotment of a State for a fiscal year under this sub-
9 part may be used by the State to administer the funds
10 paid to the State under section 1981A(c). The State shall
11 pay from non-Federal sources the remaining costs of ad-
12 ministering such funds.

13 **“SEC. 1981D. ADMINISTRATIVE PROVISIONS.**

14 “(a) APPLICATION.—The Secretary may make pay-
15 ments under section 1981A(c) to a State for a fiscal year
16 only if—

17 “(1) the State submits to the Secretary an ap-
18 plication, in such form and by such date as the Sec-
19 retary may require, for such payments;

20 “(2) the application contains a State plan pre-
21 pared in a manner consistent with section 1905(b)
22 and in accordance with tobacco-related guidelines
23 promulgated by the Secretary;

1 “(3) the application contains a certification that
2 is consistent with the certification required under
3 section 1905(c); and

4 “(4) the application contains such assurances
5 as the Secretary may require regarding the compli-
6 ance of the State with the requirements of this sub-
7 part (including assurances regarding compliance
8 with the agreements described in subsection (c)).

9 “(b) STATE PLAN.—A State plan under subsection
10 (a)(2) shall be developed in a manner consistent with the
11 plan developed under section 1905(b) except that such
12 plan—

13 “(1) with respect to activities described in sec-
14 tion 1981C(b)—

15 “(A) shall provide for tobacco use cessation
16 intervention and treatment consistent with the
17 tobacco use cessation guidelines issued by the
18 Agency for Health Care Policy and Research, or
19 another evidence-based guideline approved by
20 the Secretary, or treatments using drugs,
21 human biological products, or medical devices
22 approved by the Food and Drug Administra-
23 tion, or otherwise legally marketed under the
24 Federal Food, Drug and Cosmetic Act for use
25 as tobacco use cessation therapies or aids;

1 “(B) may, to encourage innovation and ex-
2 perimentation with new methodologies, provide
3 for or may include a targeted pilot program
4 with an evaluation component;

5 “(C) shall provide for training in tobacco
6 use cessation intervention methods for health
7 plans and health professionals, including physi-
8 cians, nurses, dentists, health educators, public
9 health professionals, and other health care pro-
10 viders;

11 “(D) shall ensure access to tobacco use
12 cessation programs for rural and underserved
13 populations;

14 “(E) shall recognize that some individuals
15 may require more than one attempt for success-
16 ful cessation; and

17 “(F) shall be tailored to the needs of spe-
18 cific populations, including minority popu-
19 lations; and

20 “(2) with respect to State and community-based
21 prevention activities described in section 1981C(c),
22 shall specify the activities authorized under such sec-
23 tion that the State intends to carry out.

1 “(c) CERTIFICATION.—The certification referred to
2 in subsection (a)(3) shall be consistent with the certifi-
3 cation required under section 1905(c), except that

4 “(1) the State shall agree to expend payments
5 under section 1981A(c) only for the activities au-
6 thorized in section 1981C;

7 “(2) paragraphs (9) and (10) of such section
8 shall not apply; and

9 “(3) the State is encouraged to establish an ad-
10 visory committee in accordance with section 1981E.

11 “(d) REPORTS, DATA, AND AUDITS.—The provisions
12 of section 1906 shall apply with respect to a State that
13 receives payments under section 1981A(c) and be applied
14 in a manner consistent with the manner in which such
15 provisions are applied to a State under part, except that
16 the data sets referred to in section 1905(a)(2) shall be
17 developed for uniformly defining levels of youth and adult
18 use of tobacco products, including uniform data for racial
19 and ethnic groups, for use in the reports required under
20 this subpart.

21 “(e) WITHHOLDING.—The provisions of 1907 shall
22 apply with respect to a State that receives payments under
23 section 1981A(c) and be applied in a manner consistent
24 with the manner in which such provisions are applied to
25 a State under part A.

1 “(f) NONDISCRIMINATION.—The provisions of 1908
2 shall apply with respect to a State that receives payments
3 under section 1981A(c) and be applied in a manner con-
4 sistent with the manner in which such provisions are ap-
5 plied to a State under part A.

6 “(g) CRIMINAL PENALTIES.—The provisions of 1909
7 shall apply with respect to a State that receives payments
8 under section 1981A(c) and be applied in a manner con-
9 sistent with the manner in which such provisions are ap-
10 plied to a State under part A.

11 **“SEC. 1981E. STATE ADVISORY COMMITTEE.**

12 “(a) IN GENERAL.—For purposes of sections
13 1981D(c)(3), an advisory committee is in accordance with
14 this section if such committee meets the conditions de-
15 scribed in this subsection.

16 “(b) DUTIES.—The recommended duties of the com-
17 mittee are—

18 “(1) to hold public hearings on the State plans
19 required under sections 1981D; and

20 “(2) to make recommendations under this sub-
21 part regarding the development and implementation
22 of such plans, including recommendations on—

23 “(A) the conduct of assessments under the
24 plans;

1 “(B) which of the activities authorized in
2 section 1981C should be carried out in the
3 State;

4 “(C) the allocation of payments made to
5 the State under section 1981A(c);

6 “(D) the coordination of activities carried
7 out under such plans with relevant programs of
8 other entities; and

9 “(E) the collection and reporting of data in
10 accordance with section 1981D.

11 “(c) COMPOSITION.—

12 “(1) IN GENERAL.—The recommended composi-
13 tion of the advisory committee is members of the
14 general public, such officials of the health depart-
15 ments of political subdivisions of the State, public
16 health professionals, teenagers, minorities, and such
17 experts in tobacco product research as may be nec-
18 essary to provide adequate representation of the gen-
19 eral public and of such health departments, and that
20 members of the committee shall be subject to the
21 provisions of sections 201, 202, and 203 of title 18,
22 United States Code.

23 “(2) REPRESENTATIVES.—With respect to com-
24 pliance with paragraph (1), the membership of the
25 advisory committee may include representatives of

1 community-based organizations (including minority
 2 community-based organizations), schools of public
 3 health, and entities to which the State involved
 4 awards grants or contracts to carry out activities au-
 5 thorized under section 1981C.

6 “SUBPART II—TOBACCO-FREE COUNTER-ADVERTISING
 7 PROGRAMS

8 **“SEC. 1982. FEDERAL-STATE COUNTER-ADVERTISING PRO-**
 9 **GRAMS.**

10 “(a) NATIONAL CAMPAIGN.—

11 “(1) IN GENERAL.—The Secretary shall con-
 12 duct a national campaign to reduce tobacco usage
 13 through media-based (such as counter-advertising
 14 campaigns) and nonmedia-based education, preven-
 15 tion and cessation campaigns designed to discourage
 16 the use of tobacco products by individuals, to en-
 17 courage those who use such products to quit, and to
 18 educate the public about the hazards of exposure to
 19 environmental tobacco smoke.

20 “(2) REQUIREMENTS.—The national campaign
 21 under paragraph (1) shall—

22 “(A) target those populations that have
 23 been targeted by tobacco industry advertising
 24 using culturally and linguistically appropriate
 25 means;

1 “(B) include a research and evaluation
2 component; and

3 “(C) be designed in a manner that permits
4 the campaign to be modified for use at the
5 State or local level.

6 “(b) ESTABLISHMENT OF AN ADVISORY BOARD.—

7 “(1) IN GENERAL.—The Secretary shall estab-
8 lish a board to be known as the ‘National Tobacco
9 Free Education Advisory Board’ (referred to in this
10 section as the ‘Board’) to evaluate and provide long
11 range planning for the development and effective
12 dissemination of public informational and edu-
13 cational campaigns and other activities that are part
14 of the campaign under subsection (a).

15 “(2) COMPOSITION.—The Board shall be com-
16 posed of—

17 “(A) 9 non-Federal members to be ap-
18 pointed by the President, after consultation and
19 agreement with the Majority and Minority
20 Leaders of the Senate and the Speaker and Mi-
21 nority Leader of the House or Representatives,
22 of which—

23 “(i) at least 3 such members shall be
24 individuals who are widely recognized by

1 the general public for cultural, educational,
2 behavioral science or medical achievement;

3 “(ii) at least 3 of whom shall be indi-
4 viduals who hold positions of leadership in
5 major public health organizations, includ-
6 ing minority public health organizations;
7 and

8 “(iii) at least 3 of whom shall be indi-
9 viduals recognized as experts in the field of
10 advertising and marketing, of which—

11 “(I) 1 member shall have specific
12 expertise in advertising and marketing
13 to children and teens; and

14 “(II) 1 member shall have exper-
15 tise in marketing research and evalua-
16 tion; and

17 “(B) the Surgeon General, the Director of
18 the Centers for Disease Control and Prevention,
19 or their designees, shall serve as an ex officio
20 members of the Board.

21 “(3) TERMS AND VACANCIES.—The members of
22 the Board shall serve for a term of 3 years. Such
23 terms shall be staggered as determined appropriate
24 at the time of appointment by the Secretary. Any
25 vacancy in the Board shall not affect its powers, but

1 shall be filled in the same manner as the original ap-
2 pointment.

3 “(4) TRAVEL EXPENSES.—The members of the
4 Board shall be allowed travel expenses, including per
5 diem in lieu of subsistence, at rates authorized for
6 employees of agencies under subchapter I of chapter
7 57 of title 5, United States Code, while away from
8 their homes or regular places of business in the per-
9 formance of services for the Board.

10 “(5) AWARDS.—In carrying out subsection (a),
11 the Secretary may—

12 “(A) enter into contracts with or award
13 grants to eligible entities to develop messages
14 and campaigns designed to prevent and reduce
15 the use of tobacco products that are based on
16 effective strategies to affect behavioral changes
17 in children and other targeted populations, in-
18 cluding minority populations;

19 “(B) enter into contracts with or award
20 grants to eligible entities to carry out public in-
21 formational and educational activities designed
22 to reduce the use of tobacco products;

23 “(6) POWERS AND DUTIES.—The Board may—

24 “(A) hold such hearings, sit and act at
25 such times and places, take such testimony, and

1 receive such evidence as the Board considers
2 advisable to carry out the purposes of this sec-
3 tion; and

4 “(B) secure directly from any Federal de-
5 partment or agency such information as the
6 Board considers necessary to carry out the pro-
7 visions of this section.

8 “(c) ELIGIBILITY.—To be eligible to receive funding
9 under this section an entity shall—

10 “(1) be a—

11 “(A) public entity or a State health depart-
12 ment; or

13 “(B) private or nonprofit private entity
14 that—

15 “(i)(I) is not affiliated with a tobacco
16 product manufacturer or importer;

17 “(II) has a demonstrated record of
18 working effectively to reduce tobacco prod-
19 uct use; or

20 “(III) has expertise in conducting a
21 multi-media communications campaign;
22 and

23 “(ii) has expertise in developing strat-
24 egies that affect behavioral changes in chil-

1 dren and other targeted populations, in-
2 cluding minority populations;

3 “(2) prepare and submit to the Secretary an
4 application at such time, in such manner, and con-
5 taining such information as the Secretary may re-
6 quire, including a description of the activities to be
7 conducted using amounts received under the grant
8 or contract;

9 “(3) provide assurances that amounts received
10 under this section will be used in accordance with
11 subsection (c); and

12 “(4) meet any other requirements determined
13 appropriate by the Secretary.

14 “(d) USE OF FUNDS.—An entity that receives funds
15 under this section shall use amounts provided under the
16 grant or contract to conduct multi-media and non-media
17 public educational, informational, marketing and pro-
18 motional campaigns that are designed to discourage and
19 de-glamorize the use of tobacco products, encourage those
20 using such products to quit, and educate the public about
21 the hazards of exposure to environmental tobacco smoke.
22 Such amounts may be used to design and implement such
23 activities and shall be used to conduct research concerning
24 the effectiveness of such programs.

1 “(e) NEEDS OF CERTAIN POPULATIONS.—In award-
2 ing grants and contracts under this section, the Secretary
3 shall take into consideration the needs of particular popu-
4 lations, including minority populations, and use methods
5 that are culturally and linguistically appropriate.

6 “(f) COORDINATION.—The Secretary shall ensure
7 that programs and activities under this section are coordi-
8 nated with programs and activities carried out under this
9 title.

10 “(g) ALLOCATION OF FUNDS.—Not to exceed—

11 “(1) 25 percent of the amount made available
12 under subsection (h) for each fiscal year shall be
13 provided to States for State and local media-based
14 and nonmedia-based education, prevention and ces-
15 sation campaigns;

16 “(2) no more than 20 percent of the amount
17 made available under subsection (h) for each fiscal
18 year shall be used specifically for the development of
19 new messages and campaigns;

20 “(3) the remainder shall be used specifically to
21 place media messages and carry out other dissemi-
22 nation activities described in subsection (d); and

23 “(4) half of 1 percent for administrative costs
24 and expenses.

1 “(h) TRIGGER.—No expenditures shall be made
 2 under this section during any fiscal year in which the an-
 3 nual amount appropriated for the Centers for Disease
 4 Control and Prevention is less than the amount so appro-
 5 priated for the prior fiscal year.”.

6 “PART E—REDUCING YOUTH SMOKING AND TOBACCO-
 7 RELATED DISEASES THROUGH RESEARCH
 8 **“SEC. 1991. FUNDING FROM TOBACCO SETTLEMENT TRUST**
 9 **FUND.**

10 No expenditures shall be made under sections 451(b)
 11 or (c)—

12 “(1) for the National Institutes of Health dur-
 13 ing any fiscal year in which the annual amount ap-
 14 propriated for such Institutes is less than the
 15 amount so appropriated for the prior fiscal year;

16 “(2) for the Centers for Disease Control and
 17 Prevention during any fiscal year in which the an-
 18 nual amount appropriated for such Centers is less
 19 than the amount so appropriated for the prior fiscal
 20 year; or

21 “(3) for the Agency for Health Care Policy and
 22 Research during any fiscal year in which the annual
 23 amount appropriated for such Agency is less than
 24 the amount so appropriated for the prior fiscal year.

1 **“SEC. 1991A. STUDY BY THE INSTITUTE OF MEDICINE.**

2 “(a) CONTRACT.—Not later than 60 days after the
3 date of enactment of this title, the Secretary shall enter
4 into a contract with the Institute of Medicine for the con-
5 duct of a study on the framework for a research agenda
6 and research priorities to be used under this part.

7 “(b) CONSIDERATIONS.—

8 “(1) IN GENERAL.—In developing the frame-
9 work for the research agenda and research priorities
10 under subsection (a) the Institute of Medicine shall
11 focus on increasing knowledge concerning the bio-
12 logical, social, behavioral, public health, and commu-
13 nity factors involved in the prevention of tobacco
14 use, reduction of tobacco use, and health con-
15 sequences of tobacco use.

16 “(2) SPECIFIC CONSIDERATIONS.—In the study
17 conducted under subsection (a), the Institute of
18 Medicine shall specifically include research on—

19 “(A) public health and community research
20 relating to tobacco use prevention methods, in-
21 cluding public education, media, community
22 strategies;

23 “(B) behavioral research relating to addic-
24 tion, tobacco use, and patterns of smoking, in-
25 cluding risk factors for tobacco use by children,
26 women, and racial and ethnic minorities;

1 “(C) health services research relating to
2 tobacco product prevention and cessation treat-
3 ment methodologies;

4 “(D) surveillance and epidemiology re-
5 search relating to tobacco;

6 “(E) biomedical, including clinical, re-
7 search relating to prevention and treatment of
8 tobacco-related diseases, including a focus on
9 minorities, including racial and ethnic minori-
10 ties;

11 “(F) the effects of tobacco products, ingre-
12 dients of tobacco products, and tobacco smoke
13 on the human body and methods of reducing
14 any negative effects, including the development
15 of non-addictive, reduced risk tobacco products;

16 “(G) differentials between brands of to-
17 bacco products with respect to health effects or
18 addiction;

19 “(H) risks associated with environmental
20 exposure to tobacco smoke, including a focus on
21 children and infants;

22 “(I) effects of tobacco use by pregnant
23 women; and

24 “(J) other matters determined appropriate
25 by the Institute.

1 “(c) REPORT.—Not later than 10 months after the
2 date on which the Secretary enters into the contract under
3 subsection (a), the Institute of Medicine shall prepare and
4 submit to the Secretary, the Committee on Labor and
5 Human Resources, and the Committee on Appropriations
6 of the Senate, and the Committee on Commerce of the
7 House of Representatives, a report that shall contain the
8 findings and recommendations of the Institute for the pur-
9 poses described in subsection (b).

10 **“SEC. 1991B. RESEARCH COORDINATION.**

11 “(a) IN GENERAL.—The Secretary shall foster co-
12 ordination among Federal research agencies, public health
13 agencies, academic bodies, and community groups that
14 conduct or support tobacco-related biomedical, clinical, be-
15 havioral, health services, public health and community,
16 and surveillance and epidemiology research activities.

17 “(b) REPORT.—The Secretary shall prepare and sub-
18 mit a report on a biennial basis to the Committee on
19 Labor and Human Resources, and the Committee on Ap-
20 propriations of the Senate, and the Committee on Com-
21 merce of the House of Representatives on the current and
22 planned tobacco-related research activities of participating
23 Federal agencies.

1 **“SEC. 1991C. RESEARCH ACTIVITIES OF THE CENTERS FOR**
2 **DISEASE CONTROL AND PREVENTION.**

3 “(a) DUTIES.—The Director of the Centers for Dis-
4 ease Control and Prevention shall, from amounts provided
5 under section 451(c), and after review of the study of the
6 Institute of Medicine, carry out tobacco-related surveil-
7 lance and epidemiologic studies and develop tobacco con-
8 trol and prevention strategies; and

9 “(b) YOUTH SURVEILLANCE SYSTEMS.—From
10 amounts provided under section 451(b), the Director of
11 the Centers for Disease Control and Prevention shall pro-
12 vide for the use of youth surveillance systems to monitor
13 the use of all tobacco products by individuals under the
14 age of 18, including brands-used to enable determinations
15 to be made of company-specific youth market share.

16 **“SEC. 1991D. RESEARCH ACTIVITIES OF THE NATIONAL IN-**
17 **STITUTES OF HEALTH.**

18 “(a) FUNDING.—There are authorized to be appro-
19 priated, from amounts in the National Tobacco Settlement
20 Trust Fund established by section 401 of the National To-
21 bacco Policy and Youth Smoking Reduction Act.

22 “(b) EXPENDITURE OF FUNDS.—The Director of the
23 National Institutes of Health shall provide funds to con-
24 duct or support epidemiological, behavioral, biomedical,
25 and social science research, including research related to
26 the prevention and treatment of tobacco addiction, and the

1 prevention and treatment of diseases associated with to-
2 bacco use.

3 “(c) GUARANTEED MINIMUM.—Of the funds made
4 available to the National Institutes of Health under this
5 section, such sums as may be necessary, may be used to
6 support epidemiological, behavioral, and social science re-
7 search related to the prevention and treatment of tobacco
8 addiction.

9 “(d) NATURE OF RESEARCH.—Funds made available
10 under subsection (d) may be used to conduct or support
11 research with respect to one or more of the following—

12 “(1) the epidemiology of tobacco use;

13 “(2) the etiology of tobacco use;

14 “(3) risk factors for tobacco use by children;

15 “(4) prevention of tobacco use by children, in-
16 cluding school and community-based programs, and
17 alternative activities;

18 “(5) the relationship between tobacco use, alco-
19 hol abuse and illicit drug abuse;

20 “(6) behavioral and pharmacological smoking
21 cessation methods and technologies, including re-
22 lapse prevention;

23 “(7) the toxicity of tobacco products and their
24 ingredients;

1 “(8) the relative harmfulness of different to-
2 bacco products;

3 “(9) environmental exposure to tobacco smoke;

4 “(10) the impact of tobacco use by pregnant
5 women on their fetuses;

6 “(11) the redesign of tobacco products to re-
7 duce risks to public health and safety; and

8 “(12) other appropriate epidemiological, behav-
9 ioral, and social science research.

10 “(e) COORDINATION.—In carrying out tobacco-relat-
11 ed research under this section, the Director of the Na-
12 tional Institutes of Health shall ensure appropriate coordi-
13 nation with the research of other agencies, and shall avoid
14 duplicative efforts through all appropriate means.

15 “(h) ADMINISTRATION.—The director of the NIH Of-
16 fice of Behavioral and Social Sciences Research may—

17 “(1) identify tobacco-related research initiatives
18 that should be conducted or supported by the re-
19 search institutes, and develop such projects in co-
20 operation with such institutes;

21 “(2) coordinate tobacco-related research that is
22 conducted or supported by the National Institutes of
23 Health;

1 “(3) annually recommend to Congress the allo-
2 cation of anti-tobacco research funds among the na-
3 tional research institutes; and

4 “(4) establish a clearinghouse for information
5 about tobacco-related research conducted by govern-
6 mental and non-governmental bodies.

7 “(f) TRIGGER.—No expenditure shall be made under
8 subsection (a) during any fiscal year in which the annual
9 amount appropriated for the National Institutes of Health
10 is less than the amount so appropriated for the prior fiscal
11 year.

12 “(g) REPORT.—The Director of the NIH shall every
13 2 years prepare and submit to the Congress a report
14 ———— research activities, including funding levels, for
15 research made available under subsection (c).

16 (b) MEDICAID COVERAGE OF OUTPATIENT SMOKING
17 CESSATION AGENTS.—Paragraph (2) of section 1927(d)
18 of the Public Health Service Act (42 U.S.C. 1396r–8(d))
19 is amended—

20 (1) by striking subparagraph (E) and redesignig-
21 nating subparagraphs (F) through (J) as subpara-
22 graphs (E) through (I); and

23 (2) by striking “drugs.” in subparagraph (F),
24 as redesignated, and inserting “drugs, except agents,

1 approved by the Food and Drug Administration,
2 when used to promote smoking cessation.”.

3 **“SEC. 1991E. RESEARCH ACTIVITIES OF THE AGENCY FOR**
4 **HEALTH CARE POLICY AND RESEARCH.**

5 “(a) IN GENERAL.—The Administrator of the Agen-
6 cy for Health Care Policy and Research shall carry out
7 outcomes, effectiveness, cost-effectiveness, and other
8 health services research related to effective interventions
9 for the prevention and cessation of tobacco use and appro-
10 priate strategies for implementing those services, the out-
11 comes and delivery of care for diseases related to tobacco
12 use, and the development of quality measures for evaluat-
13 ing the provision of those services.

14 “(b) ANALYSES AND SPECIAL PROGRAMS.—The Sec-
15 retary, acting through the Administrator of the Agency
16 for Health Care Policy and Research, shall support—

17 “(1) and conduct periodic analyses and evalua-
18 tions of the best scientific information in the area of
19 smoking and other tobacco product use cessation;
20 and

21 “(2) the development and dissemination of spe-
22 cial programs in cessation intervention for health
23 plans and national health professional societies.”.

1 **TITLE III—TOBACCO PRODUCT**
 2 **WARNINGS AND SMOKE CON-**
 3 **STITUENT DISCLOSURE**

4 **Subtitle A—Product Warnings,**
 5 **Labeling and Packaging**

6 **SEC. 301. CIGARETTE LABEL AND ADVERTISING WARNINGS.**

7 (a) IN GENERAL.—Section 4 of the Federal Cigarette
 8 Labeling and Advertising Act (15 U.S.C. 1333) is amend-
 9 ed to read as follows:

10 **“SEC. 4. LABELING.**

11 **“(a) LABEL REQUIREMENTS.—**

12 **“(1) IN GENERAL.—**It shall be unlawful for any
 13 person to manufacture, package, or import for sale
 14 or distribution within the United States any ciga-
 15 rettes the package of which fails to bear, in accord-
 16 ance with the requirements of this section, one of
 17 the following labels:

18 **“WARNING: Cigarettes are addictive”**

19 **“WARNING: Tobacco smoke can harm your chil-**
 20 **dren”**

21 **“WARNING: Cigarettes cause fatal lung disease”**

22 **“WARNING: Cigarettes cause cancer”**

23 **“WARNING: Cigarettes cause strokes and heart**
 24 **disease”**

1 “WARNING: Smoking during pregnancy can harm
2 your baby”

3 “WARNING: Smoking can kill you”

4 “WARNING: Tobacco smoke causes fatal lung dis-
5 ease in non-smokers”

6 “WARNING: Quitting smoking now greatly reduces
7 serious risks to your health”

8 “(2) PLACEMENT; TYPOGRAPHY; ETC.—

9 “(A) IN GENERAL.—Each label statement
10 required by paragraph (1) shall be located in
11 the upper portion of the front and rear panels
12 of the package, directly on the package under-
13 neath the cellophane or other clear wrapping.
14 Except as provided in subparagraph (B), each
15 label statement shall comprise at least the top
16 25 percent of the front and rear panels of the
17 package. The word “WARNING” shall appear
18 in capital letters and all text shall be in con-
19 spicuous and legible 17-point type, unless the
20 text of the label statement would occupy more
21 than 70 percent of such area, in which case the
22 text may be in a smaller conspicuous and leg-
23 ible type size, provided that at least 60 percent
24 of such area is occupied by required text. The
25 text shall be black on a white background, or

1 white on a black background, in a manner that
2 contrasts, by typography, layout, or color, with
3 all other printed material on the package, in an
4 alternating fashion under the plan submitted
5 under subsection (b)(4).

6 “(B) FLIP-TOP BOXES.—For any cigarette
7 brand package manufactured or distributed be-
8 fore January 1, 2000, which employs a flip-top
9 style (if such packaging was used for that
10 brand in commerce prior to June 21, 1997), the
11 label statement required by paragraph (1) shall
12 be located on the flip-top area of the package,
13 even if such area is less than 25 percent of the
14 area of the front panel. Except as provided in
15 this paragraph, the provisions of this subsection
16 shall apply to such packages.

17 “(3) DOES NOT APPLY TO FOREIGN DISTRIBU-
18 TION.—The provisions of this subsection do not
19 apply to a tobacco product manufacturer or distribu-
20 tor of cigarettes which does not manufacture, pack-
21 age, or import cigarettes for sale or distribution
22 within the United States.

23 “(b) ADVERTISING REQUIREMENTS.—

24 “(1) IN GENERAL.—It shall be unlawful for any
25 tobacco product manufacturer, importer, distributor,

1 or retailer of cigarettes to advertise or cause to be
2 advertised within the United States any cigarette
3 unless its advertising bears, in accordance with the
4 requirements of this section, one of the labels speci-
5 fied in subsection (a) of this section.

6 “(2) TYPOGRAPHY, ETC.—Each label statement
7 required by subsection (a) of this section in cigarette
8 advertising shall comply with the standards set forth
9 in this paragraph. For press and poster advertise-
10 ments, each such statement and (where applicable)
11 any required statement relating to tar, nicotine, or
12 other constituent yield shall comprise at least 20
13 percent of the area of the advertisement and shall
14 appear in a conspicuous and prominent format and
15 location at the top of each advertisement within the
16 trim area. The Secretary may revise the required
17 type sizes in such area in such manner as the Sec-
18 retary determines appropriate. The word “WARN-
19 ING” shall appear in capital letters, and each label
20 statement shall appear in conspicuous and legible
21 type. The text of the label statement shall be black
22 if the background is white and white if the back-
23 ground is black, under the plan submitted under
24 paragraph (4) of this subsection. The label state-
25 ments shall be enclosed by a rectangular border that

1 is the same color as the letters of the statements
2 and that is the width of the first downstroke of the
3 capital “W” of the word “WARNING” in the label
4 statements. The text of such label statements shall
5 be in a typeface pro rata to the following require-
6 ments: 45-point type for a whole-page broadsheet
7 newspaper advertisement; 39-point type for a half-
8 page broadsheet newspaper advertisement; 39-point
9 type for a whole-page tabloid newspaper advertise-
10 ment; 27-point type for a half-page tabloid news-
11 paper advertisement; 31.5-point type for a double
12 page spread magazine or whole-page magazine ad-
13 vertisement; 22.5-point type for a 28 centimeter by
14 3 column advertisement; and 15-point type for a 20
15 centimeter by 2 column advertisement. The label
16 statements shall be in English, except that in the
17 case of—

18 “(A) an advertisement that appears in a
19 newspaper, magazine, periodical, or other publi-
20 cation that is not in English, the statements
21 shall appear in the predominant language of the
22 publication; and

23 “(B) in the case of any other advertise-
24 ment that is not in English, the statements

1 shall appear in the same language as that prin-
2 cipally used in the advertisement.

3 “(3) ADJUSTMENT BY SECRETARY.—The Sec-
4 retary may, through a rulemaking under section 553
5 of title 5, United States Code, adjust the format and
6 type sizes for the label statements required by this
7 section or the text, format, and type sizes of any re-
8 quired tar, nicotine yield, or other constituent disclo-
9 sures, or to establish the text, format, and type sizes
10 for any other disclosures required under the Federal
11 Food, Drug, and Cosmetic Act (21 U.S.C. 301 et.
12 seq.). The text of any such label statements or dis-
13 closures shall be required to appear only within the
14 20 percent area of cigarette advertisements provided
15 by paragraph (2) of this subsection. The Secretary
16 shall promulgate regulations which provide for ad-
17 justments in the format and type sizes of any text
18 required to appear in such area to ensure that the
19 total text required to appear by law will fit within
20 such area.

21 “(4) MARKETING REQUIREMENTS.—

22 “(A) The label statements specified in sub-
23 section (a)(1) shall be randomly displayed in
24 each 12-month period, in as equal a number of
25 times as is possible on each brand of the prod-

1 uct and be randomly distributed in all areas of
2 the United States in which the product is mar-
3 keted in accordance with a plan submitted by
4 the tobacco product manufacturer, importer,
5 distributor, or retailer and approved by the Sec-
6 retary.

7 “(B) The label statements specified in sub-
8 section (a)(1) shall be rotated quarterly in al-
9 ternating sequence in advertisements for each
10 brand of cigarettes in accordance with a plan
11 submitted by the tobacco product manufacturer,
12 importer, distributor, or retailer to, and ap-
13 proved by, the Secretary.

14 “(C) The Secretary shall review each plan
15 submitted under subparagraph (B) and approve
16 it if the plan—

17 “(i) will provide for the equal distribu-
18 tion and display on packaging and the ro-
19 tation required in advertising under this
20 subsection; and

21 “(ii) assures that all of the labels re-
22 quired under this section will be displayed
23 by the tobacco product manufacturer, im-
24 porter, distributor, or retailer at the same
25 time.”.

1 (b) REPEAL OF PROHIBITION ON STATE RESTRIC-
2 TION.—Section 5 of the Federal Cigarette Labeling and
3 Advertising Act (15 U.S.C. 1334) is amended—

4 (1) by striking “(a) ADDITIONAL STATE-
5 MENTS.—” IN SUBSECTION (A); AND

6 (2) by striking subsection (b).

7 **SEC. 302. AUTHORITY TO REVISE CIGARETTE WARNING**
8 **LABEL STATEMENTS.**

9 Section 4 of the Federal Cigarette Labeling and Ad-
10 vertising Act (15 U.S.C. 1333), as amended by section
11 301 of this title, is further amended by adding at the end
12 the following:

13 “(c) CHANGE IN REQUIRED STATEMENTS.—The Sec-
14 retary may, by a rulemaking conducted under section 553
15 of title 5, United States Code, adjust the format, type size,
16 and text of any of the warning label statements required
17 by subsection (a) of this section, or establish the format,
18 type size, and text of any other disclosures required under
19 the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301
20 et seq.), if the Secretary finds that such a change would
21 promote greater public understanding of the risks associ-
22 ated with the use of smokeless tobacco products.”.

1 **SEC. 303. SMOKELESS TOBACCO LABELS AND ADVERTISING**
2 **WARNINGS.**

3 Section 3 of the Comprehensive Smokeless Tobacco
4 Health Education Act of 1986 (15 U.S.C. 4402) is amend-
5 ed to read as follows:

6 **“SEC. 3. SMOKELESS TOBACCO WARNING.**

7 **“(a) GENERAL RULE.—**

8 **“(1) It shall be unlawful for any person to man-**
9 **ufacture, package, or import for sale or distribution**
10 **within the United States any smokeless tobacco**
11 **product unless the product package bears, in accord-**
12 **ance with the requirements of this Act, one of the**
13 **following labels:**

14 **“WARNING: This product can cause mouth cancer”**

15 **“WARNING: This product can cause gum disease**
16 **and tooth loss”**

17 **“WARNING: This product is not a safe alternative**
18 **to cigarettes”**

19 **“WARNING: Smokeless tobacco is addictive”**

20 **“(2) Each label statement required by para-**
21 **graph (1) shall be—**

22 **“(A) located on the 2 principal display**
23 **panels of the package, and each label statement**
24 **shall comprise at least 25 percent of each such**
25 **display panel; and**

1 “(B) in 17-point conspicuous and legible
2 type and in black text on a white background,
3 or white text on a black background, in a man-
4 ner that contrasts by typography, layout, or
5 color, with all other printed material on the
6 package, in an alternating fashion under the
7 plan submitted under subsection (b)(3), except
8 that if the text of a label statement would oc-
9 cupy more than 70 percent of the area specified
10 by subparagraph (A), such text may appear in
11 a smaller type size, so long as at least 60 per-
12 cent of such warning area is occupied by the
13 label statement.

14 “(3) The label statements required by para-
15 graph (1) shall be introduced by each tobacco prod-
16 uct manufacturer, packager, importer, distributor, or
17 retailer of smokeless tobacco products concurrently
18 into the distribution chain of such products.

19 “(4) The provisions of this subsection do not
20 apply to a tobacco product manufacturer or distribu-
21 tor of any smokeless tobacco product that does not
22 manufacture, package, or import smokeless tobacco
23 products for sale or distribution within the United
24 States.

25 “(b) REQUIRED LABELS.—

1 “(1) It shall be unlawful for any tobacco prod-
2 uct manufacturer, packager, importer, distributor, or
3 retailer of smokeless tobacco products to advertise or
4 cause to be advertised within the United States any
5 smokeless tobacco product unless its advertising
6 bears, in accordance with the requirements of this
7 section, one of the labels specified in subsection (a).

8 “(2) Each label statement required by sub-
9 section (a) in smokeless tobacco advertising shall
10 comply with the standards set forth in this para-
11 graph. For press and poster advertisements, each
12 such statement and (where applicable) any required
13 statement relating to tar, nicotine, or other constitu-
14 ent yield shall—

15 “(A) comprise at least 20 percent of the
16 area of the advertisement, and the warning area
17 shall be delineated by a dividing line of con-
18 trasting color from the advertisement; and

19 “(B) the word “WARNING” shall appear
20 in capital letters and each label statement shall
21 appear in conspicuous and legible type. The text
22 of the label statement shall be black on a white
23 background, or white on a black background, in
24 an alternating fashion under the plan submitted
25 under paragraph (3).

1 “(3)(A) The label statements specified in sub-
2 section (a)(1) shall be randomly displayed in each
3 12-month period, in as equal a number of times as
4 is possible on each brand of the product and be ran-
5 domly distributed in all areas of the United States
6 in which the product is marketed in accordance with
7 a plan submitted by the tobacco product manufac-
8 turer, importer, distributor, or retailer and approved
9 by the Secretary.

10 “(B) The label statements specified in sub-
11 section (a)(1) shall be rotated quarterly in alternat-
12 ing sequence in advertisements for each brand of
13 smokeless tobacco product in accordance with a plan
14 submitted by the tobacco product manufacturer, im-
15 porter, distributor, or retailer to, and approved by,
16 the Secretary.

17 “(C) The Secretary shall review each plan sub-
18 mitted under subparagraph (B) and approve it if the
19 plan—

20 “(i) will provide for the equal distribution
21 and display on packaging and the rotation re-
22 quired in advertising under this subsection; and

23 “(ii) assures that all of the labels required
24 under this section will be displayed by the to-

1 bacco product manufacturer, importer, distribu-
2 tor, or retailer at the same time.

3 “(c) TELEVISION AND RADIO ADVERTISING.—It is
4 unlawful to advertise smokeless tobacco on any medium
5 of electronic communications subject to the jurisdiction of
6 the Federal Communications Commission.”.

7 **SEC. 304. AUTHORITY TO REVISE SMOKELESS TOBACCO**
8 **PRODUCT WARNING LABEL STATEMENTS.**

9 Section 3 of the Comprehensive Smokeless Tobacco
10 Health Education Act of 1986 (15 U.S.C. 4402), as
11 amended by section 303 of this title, is further amended
12 by adding at the end the following:

13 “(d) AUTHORITY TO REVISE WARNING LABEL
14 STATEMENTS.—The Secretary may, by a rulemaking con-
15 ducted under section 553 of title 5, United States Code,
16 adjust the format, type size, and text of any of the warn-
17 ing label statements required by subsection (a) of this sec-
18 tion, or establish the format, type size, and text of any
19 other disclosures required under the Federal Food, Drug,
20 and Cosmetic Act (21 U.S.C. 301 et seq.), if the Secretary
21 finds that such a change would promote greater public un-
22 derstanding of the risks associated with the use of smoke-
23 less tobacco products.”.

1 **SEC. 305. TAR, NICOTINE, AND OTHER SMOKE CONSTITU-**
2 **ENT DISCLOSURE TO THE PUBLIC.**

3 Section 4(a) of the Federal Cigarette Labeling and
4 Advertising Act (15 U.S.C. 1333 (a)), as amended by sec-
5 tion 301 of this title, is further amended by adding at
6 the end the following:

7 “(4)(A) The Secretary shall, by a rulemaking
8 conducted under section 553 of title 5, United
9 States Code, determine (in the Secretary’s sole dis-
10 cretion) whether cigarette and other tobacco product
11 manufacturers shall be required to include in the
12 area of each cigarette advertisement specified by
13 subsection (b) of this section, or on the package
14 label, or both, the tar and nicotine yields of the ad-
15 vertised or packaged brand. Any such disclosure
16 shall be in accordance with the methodology estab-
17 lished under such regulations, shall conform to the
18 type size requirements of subsection (b) of this sec-
19 tion, and shall appear within the area specified in
20 subsection (b) of this section.

21 “(B) Any differences between the requirements
22 established by the Secretary under subparagraph (A)
23 and tar and nicotine yield reporting requirements es-
24 tablished by the Federal Trade Commission shall be
25 resolved by a memorandum of understanding be-

1 tween the Secretary and the Federal Trade Commis-
2 sion.

3 “(C) In addition to the disclosures required by
4 subparagraph (A) of this paragraph, the Secretary
5 may, under a rulemaking conducted under section
6 553 of title 5, United States Code, prescribe disclo-
7 sure requirements regarding the level of any ciga-
8 rette or other tobacco product smoke constituent.
9 Any such disclosure may be required if the Secretary
10 determines that disclosure would be of benefit to the
11 public health, or otherwise would increase consumer
12 awareness of the health consequences of the use of
13 tobacco products, except that no such prescribed dis-
14 closure shall be required on the face of any cigarette
15 package or advertisement. Nothing in this section
16 shall prohibit the Secretary from requiring such pre-
17 scribed disclosure through a cigarette or other to-
18 bacco product package or advertisement insert, or by
19 any other means under the Federal Food, Drug, and
20 Cosmetic Act (21 U.S.C. 301 et seq.).”.

1 **Subtitle B—Testing and Reporting**
2 **of Tobacco Product Smoke Con-**
3 **stituents**

4 **SEC. 311. REGULATION REQUIREMENT.**

5 (a) TESTING, REPORTING, AND DISCLOSURE.—Not
6 later than 24 months after the date of enactment of this
7 Act, the Secretary, through the Commissioner of the Food
8 and Drug Administration, shall promulgate regulations
9 under the Federal Food, Drug, and Cosmetic Act (21
10 U.S.C. 301 et seq.) that meet the requirements of sub-
11 section (b) of this section.

12 (b) CONTENTS OF RULES.—The rules promulgated
13 under subsection (a) of this section shall require the test-
14 ing, reporting, and disclosure of tobacco product smoke
15 constituents and ingredients that the Secretary determines
16 should be disclosed to the public in order to protect the
17 public health. Such constituents shall include tar, nicotine,
18 carbon monoxide, and such other smoke constituents or
19 ingredients as the Secretary may determine to be appro-
20 priate. The rule may require that tobacco product manu-
21 facturers, packagers, or importers make such disclosures
22 relating to tar and nicotine through labels or advertising,
23 and make such disclosures regarding other smoke con-
24 stituents or ingredients as the Secretary determines are
25 necessary to protect the public health.

1 (c) AUTHORITY.—The Food and Drug Administra-
 2 tion shall have authority to conduct or to require the test-
 3 ing, reporting, or disclosure of tobacco product smoke con-
 4 stituents.

5 **TITLE IV—NATIONAL TOBACCO** 6 **TRUST FUND**

7 **SEC. 401. ESTABLISHMENT OF TRUST FUND.**

8 (a) CREATION.—There is established in the Treasury
 9 of the United States a trust fund to be known as the “Na-
 10 tional Tobacco Trust Fund”, consisting of such amounts
 11 as may be appropriated or credited to the trust fund.

12 (b) TRANSFERS TO NATIONAL TOBACCO TRUST
 13 FUND.—There shall be credited to the trust fund the net
 14 revenues resulting from the following amounts:

15 (1) Amounts paid under section 402.

16 (2) Amounts equal to the fines or penalties paid
 17 under section 402, 403, or 405, including interest
 18 thereon.

19 (3) Amounts equal to penalties paid under sec-
 20 tion 202, including interest thereon.

21 (c) NET REVENUES.—For purposes of subsection
 22 (b), the term “net revenues” means the amount estimated
 23 by the Secretary of the Treasury based on the excess of—

24 (1) the amounts received in the Treasury under
 25 subsection (b), over

1 (2) the decrease in the taxes imposed by chap-
2 ter 1 and chapter 52 of the Internal Revenue Code
3 of 1986, and other offsets, resulting from the
4 amounts received under subsection (b).

5 (d) EXPENDITURES FROM THE TRUST FUND.—
6 Amounts in the Trust Fund shall be available in each fis-
7 cal year, as provided in appropriation Acts. The authority
8 to allocate net revenues as provided in this title and to
9 obligate any amounts so allocated is contingent upon ac-
10 tual receipt of net revenues.

11 (e) BUDGETARY TREATMENT.—The amount of net
12 receipts in excess of that amount which is required to off-
13 set the direct spending in this Act under section 252 of
14 the Balanced Budget and Emergency Deficit Control Act
15 of 1985 (2 U.S.C. 902) shall be available exclusively to
16 offset the appropriations required to fund the authoriza-
17 tions of appropriations in this Act (including the amend-
18 ments made by this Act), and the amount of such appro-
19 priations shall not be included in the estimates required
20 under section 251 of that Act (2 U.S.C. 901).

21 (f) ADMINISTRATIVE PROVISIONS.—Section 9602 of
22 the Internal Revenue Code of 1986 shall apply to the trust
23 fund to the same extent as if it were established by sub-
24 chapter A of chapter 98 of such Code, except that, for
25 purposes of section 9602(b)(3), any interest or proceeds

1 shall be covered into the Treasury as miscellaneous re-
2 cepts.

3 **SEC. 402. PAYMENTS BY INDUSTRY.**

4 (a) INITIAL PAYMENT.—

5 (1) CERTAIN TOBACCO PRODUCT MANUFACTUR-
6 ERS.—The following participating tobacco product
7 manufacturers, subject to the provisions of title
8 XIV, shall deposit into the National Tobacco Trust
9 Fund an aggregate payment of \$10,000,000,000,
10 apportioned as follows:

11 (A) Phillip Morris Incorporated—65.8 per-
12 cent.

13 (B) Brown and Williamson Tobacco Cor-
14 poration—17.3 percent.

15 (C) Lorillard Tobacco Company—7.1 per-
16 cent.

17 (D) R.J. Reynolds Tobacco Company—6.6
18 percent.

19 (E) United States Tobacco Company—3.2
20 percent.

21 (2) NO CONTRIBUTION FROM OTHER TOBACCO
22 PRODUCT MANUFACTURERS.—No other tobacco
23 product manufacturer shall be required to contribute
24 to the payment required by this subsection.

1 (3) PAYMENT DATE; INTEREST.—Each tobacco
 2 product manufacturer required to make a payment
 3 under paragraph (1) of this subsection shall make
 4 such payment within 30 days after the date of com-
 5 pliance with this Act and shall owe interest on such
 6 payment at the prime rate plus 10 percent per
 7 annum, as published in the Wall Street Journal on
 8 the latest publication date on or before the date of
 9 enactment of this Act, for payments made after the
 10 required payment date.

11 (b) ANNUAL PAYMENTS.—Each calendar year begin-
 12 ning after the required payment date under subsection
 13 (a)(3) the tobacco product manufacturers shall make total
 14 payments into the Fund for each calendar year in the fol-
 15 lowing applicable base amounts, subject to adjustment as
 16 provided in section 403:

17 (1) year 1—\$14,400,000,000.

18 (2) year 2—\$15,400,000,000.

19 (3) year 3—\$17,700,000,000.

20 (4) year 4—\$21,400,000,000.

21 (5) year 5—\$23,600,000,000.

22 (6) year 6 and thereafter—the adjusted appli-
 23 cable base amount under section 403.

24 (c) PAYMENT SCHEDULE; RECONCILIATION.—

1 (1) ESTIMATED PAYMENTS.—Deposits toward
2 the annual payment liability for each calendar year
3 under subsection (d)(2) shall be made in 3 equal in-
4 stallments due on March 1st, on June 1st, and on
5 August 1st of each year. Each installment shall be
6 equal to one-third of the estimated annual payment
7 liability for that calendar year. Deposits of install-
8 ments paid after the due date shall accrue interest
9 at the prime rate plus 10 percent per annum, as
10 published in the Wall Street Journal on the latest
11 publication date on or before the payment date.

12 (2) RECONCILIATION.—If the liability for a cal-
13 endar year under subsection (d)(2) exceeds the de-
14 posits made during that calendar year, the manufac-
15 turer shall pay the unpaid liability on March 1st of
16 the succeeding calendar year, along with the first de-
17 posit for that succeeding year. If the deposits during
18 a calendar year exceed the liability for the calendar
19 year under subsection (d)(2), the manufacturer shall
20 subtract the amount of the excess deposits from its
21 deposit on March 1st of the succeeding calendar
22 year.

23 (d) APPORTIONMENT OF ANNUAL PAYMENT.—

24 (1) IN GENERAL.—Each tobacco product manu-
25 facturer is liable for its share of the applicable base

1 amount payment due each year under subsection
2 (b). The annual payment is the obligation and re-
3 sponsibility of only those tobacco product manufac-
4 turers and their affiliates that directly sell tobacco
5 products in the domestic market to wholesalers, re-
6 tailers, or consumers, their successors and assigns,
7 and any subsequent fraudulent transferee (but only
8 to the extent of the interest or obligation fraudu-
9 lently transferred).

10 (2) DETERMINATION OF AMOUNT OF PAYMENT
11 DUE.—Each tobacco product manufacturer is liable
12 for its share of each installment in proportion to its
13 share of tobacco products sold in the domestic mar-
14 ket for the calendar year. One month after the end
15 of the calendar year, the Secretary shall make a
16 final determination of each tobacco product manu-
17 facturer's applicable base amount payment obliga-
18 tion.

19 (3) CALCULATION OF TOBACCO PRODUCT MAN-
20 UFACTURER'S SHARE OF ANNUAL PAYMENT.—The
21 share of the annual payment apportioned to a to-
22 bacco product manufacturer shall be equal to that
23 manufacturer's share of adjusted units, taking into
24 account the manufacturer's total production of such
25 units sold in the domestic market. A tobacco product

1 manufacturer's share of adjusted units shall be de-
 2 termined as follows:

3 (A) UNITS.—A tobacco product manufac-
 4 turer's number of units shall be determined by
 5 counting each—

6 (i) pack of 20 cigarettes as 1 adjusted
 7 unit;

8 (ii) 1.2 ounces of moist snuff as 0.75
 9 adjusted unit; and

10 (iii) 3 ounces of other smokeless to-
 11 bacco product as 0.35 adjusted units.

12 (B) DETERMINATION OF ADJUSTED
 13 UNITS.—Except as provided in subparagraph
 14 (C), a smokeless tobacco product manufactur-
 15 er's number of adjusted units shall be deter-
 16 mined under the following table:

For units:	Each unit shall be treated as:
Not exceeding 150 million	70% of a unit
Exceeding 150 million	100% of a unit

17 (C) ADJUSTED UNITS DETERMINED ON
 18 TOTAL DOMESTIC PRODUCTION.—For purposes
 19 of determining a manufacturer's number of ad-
 20 justed units under subparagraph (B), a manu-
 21 facturer's total production of units, whether in-
 22 tended for domestic consumption or export,
 23 shall be taken into account.

1 (D) SPECIAL RULE FOR LARGE MANUFAC-
2 TURERS.—If a tobacco product manufacturer
3 has more than 200 million units under subpara-
4 graph (A), then that manufacturer's number of
5 adjusted units shall be equal to the total num-
6 ber of units, and not determined under sub-
7 paragraph (B).

8 (E) SMOKELESS EQUIVALENCY STUDY.—
9 Not later than January 1, 2003, the Secretary
10 shall submit to the Congress a report detailing
11 the extent to which youths are substituting
12 smokeless tobacco products for cigarettes. If the
13 Secretary determines that significant substi-
14 tution is occurring, the Secretary shall include
15 in the report recommendations to address sub-
16 stitution, including consideration of modifica-
17 tion of the provisions of subparagraph (A).

18 (e) COMPUTATIONS.—The determinations required
19 by subsection (d) shall be made and certified by the Sec-
20 retary of Treasury. The parties shall promptly provide the
21 Treasury Department with information sufficient for it to
22 make such determinations.

23 (f) NONAPPLICATION TO CERTAIN MANUFACTUR-
24 ERS.—

1 (1) EXEMPTION.—A manufacturer described in
2 paragraph (3) is exempt from the payments required
3 by subsection (b).

4 (2) LIMITATION.—Paragraph (1) applies only
5 to assessments on cigarettes to the extent that those
6 cigarettes constitute less than 3 percent of all ciga-
7 rettes manufactured and distributed to consumers in
8 any calendar year.

9 (3) TOBACCO PRODUCT MANUFACTURERS TO
10 WHICH SUBSECTION APPLIES.—A tobacco product
11 manufacturer is described in this paragraph if it—

12 (A) resolved tobacco-related civil actions
13 with more than 25 States before January 1,
14 1998, through written settlement agreements
15 signed by the attorneys general (or the equiva-
16 lent chief legal officer if there is no office of at-
17 torney general) of those States; and

18 (B) provides to all other States, not later
19 than December 31, 1998, the opportunity to
20 enter into written settlement agreements that—

21 (i) are substantially similar to the
22 agreements entered into with those 25
23 States; and

24 (ii) provide the other States with an-
25 nual payment terms that are equivalent to

1 the most favorable annual payment terms
2 of its written settlement agreements with
3 those 25 States.

4 **SEC. 403. ADJUSTMENTS.**

5 The applicable base amount under section 402(b) for
6 a given calendar year shall be adjusted as follows in deter-
7 mining the annual payment for that year:

8 (1) INFLATION ADJUSTMENT.—

9 (A) IN GENERAL.—Beginning with the
10 sixth calendar year after the date of enactment
11 of this Act, the adjusted applicable base amount
12 under section 402(b)(6) is the amount of the
13 annual payment made for the preceding year
14 increased by the greater of 3 percent or the an-
15 nual increase in the CPI, adjusted (for calendar
16 year 2002 and later years) by the volume ad-
17 justment under paragraph (2).

18 (B) CPI.—For purposes of subparagraph
19 (A), the CPI for any calendar year is the aver-
20 age of the Consumer Price Index for all-urban
21 consumers published by the Department of
22 Labor.

23 (C) ROUNDING.—If any increase deter-
24 mined under subparagraph (A) is not a multiple

1 of \$1,000, the increase shall be rounded to the
2 nearest multiple of \$1,000.

3 (2) VOLUME ADJUSTMENT.—Beginning with
4 calendar year 2002, the applicable base amount (as
5 adjusted for inflation under paragraph (1)) shall be
6 adjusted for changes in volume of domestic sales by
7 multiplying the applicable base amount by the ratio
8 of the actual volume for the calendar year to the
9 base volume. For purposes of this paragraph, the
10 term “base volume” means 80 percent of the num-
11 ber of units of taxable domestic removals and taxed
12 imports of cigarettes in calendar year 1997, as re-
13 ported to the Secretary of the Treasury. For pur-
14 poses of this subsection, the term “actual volume”
15 means the number of adjusted unites as defined in
16 section 402(d)(3)(A).

17 **SEC. 404. PAYMENTS TO BE PASSED THROUGH TO CONSUM-**
18 **ERS.**

19 Each tobacco product manufacturer shall use its best
20 efforts to adjust the price at which it sells each unit of
21 tobacco products in the domestic market or to an importer
22 for resale in the domestic market by an amount sufficient
23 to pass through to each purchaser on a per-unit basis an
24 equal share of the annual payments to be made by such

1 tobacco product manufacturer under this Act for the year
2 in which the sale occurs.

3 **SEC. 405. TAX TREATMENT OF PAYMENTS.**

4 All payments made under section 402 are ordinary
5 and necessary business expenses for purposes of chapter
6 1 of the Internal Revenue Code of 1986 for the year in
7 which such payments are made, and no part thereof is
8 either in settlement of an actual or potential liability for
9 a fine or penalty (civil or criminal) or the cost of a tangible
10 or intangible asset or other future benefit.

11 **SEC. 406. ENFORCEMENT FOR NONPAYMENT.**

12 (a) PENALTY.—Any tobacco product manufacturer
13 that fails to make any payment required under section 402
14 or 404 within 60 days after the date on which such fee
15 is due is liable for a civil penalty computed on the unpaid
16 balance at a rate of prime plus 10 percent per annum,
17 as published in the Wall Street Journal on the latest publi-
18 cation date on or before the payment date, during the pe-
19 riod the payment remains unpaid.

20 (b) NONCOMPLIANCE PERIOD.—For purposes of this
21 section, the term “noncompliance period” means, with re-
22 spect to any failure to make a payment required under
23 section 402 or 404, the period—

24 (1) beginning on the due date for such pay-
25 ment; and

1 (2) ending on the date on which such payment
2 is paid in full.

3 (c) LIMITATIONS.—

4 (1) IN GENERAL.—No penalty shall be imposed
5 by subsection (a) on any failure to make a payment
6 under section 402 during any period for which it is
7 established to the satisfaction of the Secretary of the
8 Treasury that none of the persons responsible for
9 such failure knew or, exercising reasonable diligence,
10 should have known, that such failure existed.

11 (2) CORRECTIONS.—No penalty shall be im-
12 posed under subsection (a) on any failure to make
13 a payment under section 402 if—

14 (A) such failure was due to reasonable
15 cause and not to willful neglect; and

16 (B) such failure is corrected during the 30-
17 day period beginning on the 1st date that any
18 of the persons responsible for such failure knew
19 or, exercising reasonable diligence, should have
20 known, that such failure existed.

21 (3) WAIVER.—In the case of any failure to
22 make a payment under section 402 that is due to
23 reasonable cause and not to willful neglect, the Sec-
24 retary of the Treasury may waive all or part of the
25 penalty imposed under subsection (a) to the extent

1 that the Secretary determines that the payment of
2 such penalty would be excessive relative to the fail-
3 ure involved.

4 **Subtitle B—General Spending**
5 **Provisions**

6 **SEC. 451. ALLOCATION ACCOUNTS.**

7 (a) STATE LITIGATION SETTLEMENT ACCOUNT.—

8 (1) IN GENERAL.—There is established within
9 the Trust Fund a separate account, to be known as
10 the State Litigation Settlement Account. Of the net
11 revenues credited to the Trust Fund under section
12 401(b)(1) for each fiscal year, 40 percent of the
13 amounts designated for allocation under the settle-
14 ment payments shall be allocated to this account.
15 Such amounts shall be reduced by the additional es-
16 timated Federal expenditures that will be incurred
17 as a result of State expenditures under section 452,
18 which amounts shall be transferred to the mis-
19 cellaneous receipts of the Treasury. If, after 10
20 years, the estimated 25-year total amount projected
21 to received in this account will be different than
22 amount than \$196,500,000,000, then beginning with
23 the eleventh year the 40 percent share will be ad-
24 justed as necessary, to a percentage not in excess of

1 50 percent and not less than 30 percent, to achieve
2 that 25-year total amount.

3 (2) APPROPRIATION.—Amounts so calculated
4 are hereby appropriated and available until expended
5 and shall be available to States for grants authorized
6 under this Act.

7 (3) DISTRIBUTION FORMULA.—The Secretary
8 of the Treasury shall consult with the National Gov-
9 ernors Association, the National Association of At-
10 torneys General, and the National Conference of
11 State Legislators on a formula for the distribution
12 of amounts in the State Litigation Settlement Ac-
13 count and report to the Congress within 90 days
14 after the date of enactment of this Act with rec-
15 ommendations for implementing a distribution for-
16 mula.

17 (4) USE OF FUNDS.—A State may use amounts
18 received under this subsection as the State deter-
19 mines appropriate, consistent with the other provi-
20 sions of this Act.

21 (5) FUNDS NOT AVAILABLE AS MEDICAID REIM-
22 BURSEMENT.—Funds in the account shall not be
23 available to the Secretary as reimbursement of Med-
24 icaid expenditures or considered as Medicaid over-
25 payments for purposes of recoupment.

1 (b) PUBLIC HEALTH ALLOCATION ACCOUNT.—

2 (1) IN GENERAL.— There is established within
3 the trust fund a separate account, to be known as
4 the Public Health Account. Twenty-two percent of
5 the net revenues credited to the trust fund under
6 section 401(b)(1) and all the net revenues credited
7 to the trust fund under section 401(b)(3) shall be al-
8 located to this account.

9 (2) AUTHORIZATION OF APPROPRIATIONS.—
10 Amounts in the Public Health Account shall be
11 available to the extent and only in the amounts pro-
12 vided in advance in appropriations Acts, to remain
13 available until expended, only for the purposes of:

14 (A) CESSATION AND OTHER TREAT-
15 MENTS.—Of the total amounts allocated to this
16 account, not less than 25 percent, but not more
17 than 35 percent are to be used to carry out
18 smoking cessation activities under part D of
19 title XIX of the Public Health Service Act, as
20 added by title II of this Act.

21 (B) INDIAN HEALTH SERVICE.—Of the
22 total amounts allocated to this account, not less
23 than 3 percent, but not more than 7 percent
24 are to be used to carry out activities under sec-
25 tion 453.

1 (C) EDUCATION AND PREVENTION.—Of
2 the total amounts allocated to this account, not
3 less than 50 percent, but not more than 65 per-
4 cent are to be used to carry out—

5 (i) counter-advertising activities under
6 section 1982 of the Public Health Service
7 Act as amended by this Act;

8 (ii) smoking prevention activities
9 under section 223;

10 (iii) surveys under section 1991C of
11 the Public Health Service Act, as added by
12 this Act (but, in no fiscal year may the
13 amounts used to carry out such surveys be
14 less than 10 percent of the amounts avail-
15 able under this subsection); and

16 (iv) international activities under sec-
17 tion 1132.

18 (D) ENFORCEMENT.—Of the total
19 amounts allocated to this account, not less than
20 17.5 percent nor more than 22.5 percent are to
21 be used to carry out the following:

22 (i) Food and Drug Administration ac-
23 tivities.

24 (I) The Food and Drug Adminis-
25 tration shall receive not less than 15

1 percent of the funds provided in sub-
2 paragraph (D) in the first fiscal year
3 beginning after the date of enactment
4 of this Act, 35 percent of such funds
5 in the second year beginning after the
6 date of enactment, and 50 percent of
7 such funds for each fiscal year begin-
8 ning after the date of enactment, as
9 reimbursements for the costs incurred
10 by the Food and Drug Administration
11 in implementing and enforcing re-
12 quirements relating to tobacco prod-
13 ucts.

14 (II) No expenditures shall be
15 made under subparagraph (D) during
16 any fiscal year in which the annual
17 amount appropriated for the Food
18 and Drug Administration is less than
19 the amount so appropriated for the
20 prior fiscal year.

21 (ii) State retail licensing activities
22 under section 251.

23 (iii) Anti-Smuggling activities under
24 section 1141.

1 (c) HEALTH AND HEALTH-RELATED RESEARCH AL-
2 LOCATION ACCOUNT.—

3 (1) IN GENERAL.— There is established within
4 the trust fund a separate account, to be known as
5 the Health and Health-Related Research Account.
6 Of the net revenues credited to the trust fund under
7 section 401(b)(1), 22 percent shall be allocated to
8 this account.

9 (2) AUTHORIZATION OF APPROPRIATIONS.—
10 Amounts in the Health and Health-Related Research
11 Account shall be available to the extent and in the
12 amounts provided in advance in appropriations acts,
13 to remain available until expended, only for the fol-
14 lowing purposes:

15 (A) \$750,000 shall be made available in fis-
16 cal year 1999 for the study to be conducted
17 under section 1991 of the Public Health Service
18 Act.

19 (B) National Institutes of Health Research
20 under section 1991D of the Public Health Serv-
21 ice Act, as added by this Act. Of the total
22 amounts allocated to this account, not less than
23 75 percent, but not more than 87 percent shall
24 be used for this purpose.

1 (C) Centers for Disease Control under sec-
2 tion 1991C of the Public Health Service Act, as
3 added by this Act, and Agency for Health Care
4 Policy and Research under section 1991E of
5 the Public Health Service Act, as added by this
6 Act. authorized under sections 2803 of that
7 Act, as so added. Of the total amounts allocated
8 to this account, not less than 12 percent, but
9 not more than 18 percent shall be used for this
10 purpose.

11 (D) National Science Foundation Research
12 under section 454. Of the total amounts allo-
13 cated to this account, not less than 1 percent,
14 but not more than 1 percent shall be used for
15 this purpose.

16 (E) Cancer Clinical Trials under section
17 455. Of the total amounts allocated to this ac-
18 count, \$750,000,000 shall be used for the first
19 3 fiscal years for this purpose.

20 (d) FARMERS ASSISTANCE ALLOCATION ACCOUNT.—

21 (1) IN GENERAL.— There is established within
22 the trust fund a separate account, to be known as
23 the Farmers Assistance Account. Of the net reve-
24 nues credited to the trust fund under section
25 401(b)(1) in each fiscal year—

1 (A) 16 percent shall be allocated to this ac-
2 count for the first 10 years after the date of en-
3 actment of this Act; and

4 (B) 4 percent shall be allocated to this ac-
5 count for each subsequent year until the ac-
6 count has received a total of \$28,500,000,000.

7 (2) APPROPRIATION.—Amounts allocated to
8 this account are hereby appropriated and shall be
9 available until expended for the purposes of section
10 1012.

11 (e) MEDICARE PRESERVATION ACCOUNT.—There is
12 established within the trust fund a separate account, to
13 be known as the Medicare Preservation Account. If, in any
14 year, the net amounts credited to the trust fund for pay-
15 ments under section 402(b) are greater than the net reve-
16 nues originally estimated under section 401(b), the
17 amount of any such excess shall be credited to the Medi-
18 care Preservation Account. Beginning in the eleventh year
19 beginning after the date of enactment of this Act, 12 per-
20 cent of the net revenues credited to the trust fund under
21 section 401(b)(1) shall be allocated to this account. Funds
22 credited to this account shall be transferred to the Medi-
23 care Hospital Insurance Trust Fund.

1 **SEC. 452. GRANTS TO STATES.**

2 (a) AMOUNTS.—From the amount made available
3 under section 402(a) for each fiscal year, each State shall
4 receive a grant on a quarterly basis according to a for-
5 mula.

6 (b) USE OF FUNDS.—

7 (1) UNRESTRICTED FUNDS.—A State may use
8 funds, not to exceed 50 percent of the amount re-
9 ceived under this section in a fiscal year, for any ac-
10 tivities determined appropriate by the State.

11 (2) RESTRICTED FUNDS.—A State shall use not
12 less than 50 percent of the amount received under
13 this section in a fiscal year to carry out additional
14 activities or provide additional services under—

15 (A) the State program under the maternal
16 and child health services block grant under title
17 V of the Social Security Act (42 U.S.C. 701 et
18 seq.);

19 (B) funding for child care under section
20 418 of the Social Security Act, notwithstanding
21 subsection (b)(2) of that section;

22 (C) federally funded child welfare and
23 abuse programs under title IV–B of the Social
24 Security Act;

25 (D) programs administered within the
26 State under the authority of the Substance

1 Abuse and Mental Health Services Administra-
2 tion under title XIX, part B of the Public
3 Health Service Act;

4 (E) Safe and Drug-Free Schools Program
5 under title IV, part A, of the Elementary and
6 Secondary Education Act of 1965 (20 U.S.C.
7 7111 et seq.);

8 (F) the Department of Education's Dwight
9 D. Eisenhower Professional Development pro-
10 gram under title II of the Elementary and Sec-
11 ondary Education Act of 1965 (20 U.S.C. 6601
12 et seq.); and

13 (G) The State Children's Health Insurance
14 Program authorized under title XXI of the So-
15 cial Security Act (42 U.S.C. 1397aa et seq.),
16 provided that the amount expended on this pro-
17 gram does not exceed 6 percent of the total
18 amount of restricted funds available to the
19 State each fiscal year.

20 (c) NO SUBSTITUTION OF SPENDING.—Amounts re-
21 ferred to in subsection (b)(2) shall be used to supplement
22 and not supplant other Federal, State, or local funds pro-
23 vided for any of the programs described in subparagraphs
24 (A) through (G) of subsection (b)(2). Restricted funds, ex-
25 cept as provided for in subsection (b)(2)(G), shall not be

1 used as State matching funds. Amounts provided to the
 2 State under any of the provisions of law referred to in
 3 such subparagraph shall not be reduced solely as a result
 4 of the availability of funds under this section.

5 (d) FEDERAL-STATE MATCH RATES.—Current
 6 (1998) matching requirements apply to each program list-
 7 ed under subsection (b)(2), except for the program de-
 8 scribed under subsection (b)(2)(B). For the program de-
 9 scribed under subsection (b)(2)(B), after an individual
 10 State has expended resources sufficient to receive its full
 11 Federal amount under section 418(a)(2)(B) of the Social
 12 Security Act (subject to the matching requirements in sec-
 13 tion 418(a)(2)(C) of such Act), the Federal share of ex-
 14 penditures shall be 80 percent.

15 (e) MAINTENANCE OF EFFORT.—To receive funds
 16 under this subsection, States must demonstrate a mainte-
 17 nance of effort. This maintenance of effort is defined as
 18 the sum of—

19 (1) an amount equal to 95 percent of Federal
 20 fiscal year 1997 State spending on the programs
 21 under subsections (b)(2)(B), (c), and (d); and

22 (2) an amount equal to the product of the
 23 amount described in paragraph (1) and—

24 (A) for fiscal year 1999, the lower of—

1 (i) general inflation as measured by
2 the consumer price index for the previous
3 year; or

4 (ii) the annual growth in the Federal
5 appropriation for the program in the pre-
6 vious fiscal year; and

7 (B) for subsequent fiscal years, the lower
8 of—

9 (i) the cumulative general inflation as
10 measured by the consumer price index for
11 the period between 1997 and the previous
12 year; or

13 (ii) the cumulative growth in the Fed-
14 eral appropriation for the program for the
15 period between fiscal year 1997 and the
16 previous fiscal year.

17 The 95-percent maintenance-of-effort requirement in
18 paragraph (1), and the adjustments in paragraph (2),
19 apply to each program identified in paragraph (1) on an
20 individual basis.

21 (f) OPTIONS FOR CHILDREN'S HEALTH OUT-
22 REACH.—In addition to the options for the use of grants
23 described in this section, the following are new options to
24 be added to States' choices for conducting children's
25 health outreach:

1 (1) EXPANSION OF PRESUMPTIVE ELIGIBILITY
2 OPTION FOR CHILDREN.—

3 (A) IN GENERAL.—Section
4 1920A(b)(3)(A)(I) of the Social Security Act
5 (42 U.S.C. 1396r–1a(b)(3)(A)(I)) is amended—

6 (i) by striking “described in sub-
7 section (a) or (II) is authorized” and in-
8 serting “described in subsection (a), (II) is
9 authorized”; and

10 (ii) by inserting before the semicolon
11 “, eligibility for benefits under part A of
12 title IV, eligibility of a child to receive ben-
13 efits under the State plan under this title
14 or title XXI, (III) is a staff member of a
15 public school, child care resource and refer-
16 ral center, or agency administering a plan
17 under part D of title IV, or (IV) is so des-
18 ignated by the State”.

19 (B) TECHNICAL AMENDMENTS.—Section
20 1920A of that Act (42 U.S.C. 1396r–1a) is
21 amended—

22 (i) in subsection (b)(3)(A)(ii), by
23 striking “paragraph (1)(A)” and inserting
24 “paragraph (2)(A)”; and

1 (ii) in subsection (c)(2), in the matter
2 preceding subparagraph (A), by striking
3 “subsection (b)(1)(A)” and inserting “sub-
4 section (b)(2)(A)”.

5 (2) REMOVAL OF REQUIREMENT THAT CHIL-
6 DREN’S HEALTH INSURANCE PROGRAM ALLOTMENTS
7 BE REDUCED BY COSTS RELATED TO PRESUMPTIVE
8 ELIGIBILITY DETERMINATIONS.—

9 (A) IN GENERAL.—Section 2104(d) of the
10 Social Security Act (42 U.S.C. 1397dd(d)) is
11 amended by striking “the sum of—” and all
12 that follows through the paragraph designation
13 “(2)” and merging all that remains of sub-
14 section (d) into a single sentence.

15 (B) EFFECTIVE DATE.—The amendment
16 made by subsection (a) shall be deemed to have
17 taken effect on August 5, 1997.

18 (3) INCREASED FUNDING FOR ADMINISTRATIVE
19 COSTS RELATED TO OUTREACH AND ELIGIBILITY
20 DETERMINATIONS FOR CHILDREN.—Section 1931(h)
21 of the Social Security Act (42 U.S.C. 1396u–1(h))
22 is amended—

23 (A) by striking the subsection caption and
24 inserting “(h) INCREASED FEDERAL MATCHING
25 RATE FOR ADMINISTRATIVE COSTS RELATED

1 TO OUTREACH AND ELIGIBILITY DETERMINA-
 2 TIONS FOR CHILDREN.—”;

3 (B) in paragraph (2), by striking “eligi-
 4 bility determinations” and all that follows and
 5 inserting “determinations of the eligibility of
 6 children for benefits under the State plan under
 7 this title or title XXI, outreach to children like-
 8 ly to be eligible for such benefits, and such
 9 other outreach- and eligibility-related activities
 10 as the Secretary may approve.”;

11 (C) in paragraph (3), by striking “and
 12 ending with fiscal year 2000 shall not exceed
 13 \$500,000,000” and inserting “shall not exceed
 14 \$525,000,000”; and

15 (D) by striking paragraph (4).

16 (g) PERIODIC REASSESSMENT OF SPENDING OP-
 17 TIONS.—Spending options under subsection (b)(2) will be
 18 reassessed jointly by the States and Federal government
 19 every 5 years and be reported to the Secretary.

20 **SEC. 453. INDIAN HEALTH SERVICE.**

21 Amounts available under section 451(b)(2)(B) shall
 22 be provided to the Indian Health Service to be used for
 23 anti-tobacco-related consumption and cessation activities
 24 including—

1 (1) clinic and facility design, construction, re-
2 pair, renovation, maintenance and improvement;

3 (2) provider services and equipment;

4 (3) domestic and community sanitation associ-
5 ated with clinic and facility construction and im-
6 provement; and

7 (4) other programs and service provided
8 through the Indian Health Service or through tribal
9 contracts, compacts, grants, or cooperative agree-
10 ments with the Indian Health Service and which are
11 deemed appropriate to raising the health status of
12 Indians.

13 **SEC. 454. RESEARCH AT THE NATIONAL SCIENCE FOUNDA-**
14 **TION.**

15 Amounts available under section 451(c)(2)(C) shall
16 be made available for necessary expenses in carry out the
17 National Science Foundation Act of 1950 (U.S.C. 1861–
18 1875), and the Act to establish a National Medal of
19 Science (42 U.S.C. 1880–1881).

20 **SEC. 455. MEDICARE CANCER PATIENT DEMONSTRATION**
21 **PROJECT; EVALUATION AND REPORT TO**
22 **CONGRESS.**

23 (a) ESTABLISHMENT.—The Secretary shall establish
24 a 3-year demonstration project which provides for pay-
25 ment under the Medicare program under title XVIII of

1 the Social Security Act (42 U.S.C. 1395 et seq.) of routine
2 patient care costs—

3 (1) which are provided to an individual diag-
4 nosed with cancer and enrolled in the Medicare pro-
5 gram under such title as part of the individual's par-
6 ticipation in an approved clinical trial program; and

7 (2) which are not otherwise eligible for payment
8 under such title for individuals who are entitled to
9 benefits under such title.

10 (b) APPLICATION.—The beneficiary cost sharing pro-
11 visions under the Medicare program, such as deductibles,
12 coinsurance, and copayment amounts, shall apply to any
13 individual in a demonstration project conducted under this
14 section.

15 (c) APPROVED CLINICAL TRIAL PROGRAM.—

16 (1) IN GENERAL.—For purposes of this section,
17 the term “approved clinical trial program” means a
18 clinical trial program which is approved by—

19 (A) the National Institutes of Health;

20 (B) a National Institutes of Health cooper-
21 ative group or a National Institutes of Health
22 center; and

23 (C) the National Cancer Institute,
24 with respect to programs that oversee and coordi-
25 nate extramural clinical cancer research, trials spon-

1 sored by such Institute and conducted at designated
2 cancer centers, clinical trials, and Institute grants
3 that support clinical investigators.

4 (2) MODIFICATIONS IN APPROVED TRIALS.—
5 Beginning 1 year after the date of enactment of this
6 Act, the Secretary, in consultation with the Cancer
7 Policy Board of the Institute of Medicine, may mod-
8 ify or add to the requirements of paragraph (1) with
9 respect to an approved clinical trial program.

10 (d) ROUTINE PATIENT CARE COSTS.—

11 (1) IN GENERAL.—For purposes of this section,
12 the term “routine patient care costs” include the
13 costs associated with the provision of items and serv-
14 ices that—

15 (A) would otherwise be covered under the
16 Medicare program if such items and services
17 were not provided in connection with an ap-
18 proved clinical trial program; and

19 (B) are furnished according to the design
20 of an approved clinical trial program.

21 (2) EXCLUSION.—For purposes of this section,
22 the term “routine patient care costs” does not in-
23 clude the costs associated with the provision of—

24 (A) an investigational drug or device, un-
25 less the Secretary has authorized the manufac-

1 turer of such drug or device to charge for such
2 drug or device; or

3 (B) any item or service supplied without
4 charge by the sponsor of the approved clinical
5 trial program.

6 (e) STUDY.—The Secretary shall study the impact on
7 the Medicare program under title XVIII of the Social Se-
8 curity Act of covering routine patient care costs for indi-
9 viduals with a diagnosis of cancer and other diagnoses,
10 who are entitled to benefits under such title and who are
11 enrolled in an approved clinical trial program.

12 (f) REPORT TO CONGRESS.—Not later than 30
13 months after the date of enactment of this Act, the Sec-
14 retary shall submit a report to Congress that contains a
15 detailed description of the results of the study conducted
16 under subsection (e) including recommendations regarding
17 the extension and expansion of the demonstration project
18 conducted under this section.

19 **TITLE V—STANDARDS TO RE-**
20 **DUCE INVOLUNTARY EXPO-**
21 **SURE TO TOBACCO SMOKE**

22 **SEC. 501. DEFINITIONS.**

23 In this title:

24 (1) ASSISTANT SECRETARY.—The term “Assist-
25 ant Secretary” means the Assistant Secretary of the

1 Occupational Safety and Health Administration of
2 the Department of Labor.

3 (2) PUBLIC FACILITY.—

4 (A) IN GENERAL.—The term “public facil-
5 ity” means any building used for purposes that
6 affect interstate or foreign commerce that is
7 regularly entered by 10 or more individuals at
8 least 1 day per week including any building
9 owned by or leased to an agency, independent
10 establishment, department, or the executive,
11 legislative, or judicial branch of the United
12 States Government.

13 (B) EXCLUSIONS.—The term “public facil-
14 ity” does not include a building or portion
15 thereof which is used for residential purposes or
16 as a restaurant (other than a fast food res-
17 taurant), bar, private club, hotel guest room or
18 common area, casino, bingo parlor, tobacco-
19 nist’s shop, or prison.

20 (C) FAST FOOD RESTAURANT DEFINED.—

21 The term “fast food restaurant” means any
22 restaurant or chain of restaurants that pri-
23 marily distributes food through a customer
24 pick-up (either at a counter or drive-through
25 window). The Assistant Secretary may promul-

1 gate regulations to clarify this subparagraph to
2 ensure that the intended inclusion of establish-
3 ments catering to individuals under 18 years of
4 age is achieved.

5 (3) RESPONSIBLE ENTITY.—The term “respon-
6 sible entity” means, with respect to any public facil-
7 ity, the owner of such facility except that, in the
8 case of any such facility or portion thereof which is
9 leased, such term means the lessee if the lessee is
10 actively engaged in supervising day-to-day activity in
11 the leased space.

12 **SEC. 502. SMOKE-FREE ENVIRONMENT POLICY.**

13 (a) POLICY REQUIRED.—In order to protect children
14 and adults from cancer, respiratory disease, heart disease,
15 and other adverse health effects from breathing environ-
16 mental tobacco smoke, the responsible entity for each pub-
17 lic facility shall adopt and implement at such facility a
18 smoke-free environment policy which meets the require-
19 ments of subsection (b).

20 (b) ELEMENTS OF POLICY.—

21 (1) IN GENERAL.—The responsible entity for a
22 public facility shall—

23 (A) prohibit the smoking of cigarettes, ci-
24 gars, and pipes, and any other combustion of
25 tobacco within the facility and on facility prop-

1 erty within the immediate vicinity of the en-
2 trance to the facility; and

3 (B) post a clear and prominent notice of
4 the smoking prohibition in appropriate and visi-
5 ble locations at the public facility.

6 (2) EXCEPTION.—The responsible entity for a
7 public facility may provide an exception to the prohi-
8 bition specified in paragraph (1) for 1 or more spe-
9 cially designated smoking areas within a public facil-
10 ity if such area or areas meet the requirements of
11 subsection (c).

12 (c) SPECIALLY DESIGNATED SMOKING AREAS.—A
13 specially designated smoking area meets the requirements
14 of this subsection if—

15 (1) the area is ventilated in accordance with
16 specifications promulgated by the Assistant Sec-
17 retary that ensure that air from the area is directly
18 exhausted to the outside and does not recirculate or
19 drift to other areas within the public facility;

20 (2) the area is maintained at negative pressure,
21 as compared to adjoining nonsmoking areas, as de-
22 termined under regulations promulgated by the As-
23 sistant Secretary;

1 (3) nonsmoking individuals do not have to enter
2 the area for any purpose while smoking is occurring
3 in such area; and

4 (4) cleaning and maintenance work are con-
5 ducted in such area only when no smoking is occur-
6 ring in the area.

7 **SEC. 503. CITIZEN ACTIONS.**

8 (a) IN GENERAL.—An action may be brought to en-
9 force the requirements of this title by any aggrieved per-
10 son, any State or local government agency, or the Assist-
11 ant Secretary.

12 (b) VENUE.—Any action to enforce this title may be
13 brought in any United States district court for the district
14 in which the defendant resides or is doing business to en-
15 join any violation of this title or to impose a civil penalty
16 for any such violation in the amount of not more than
17 \$5,000 per day of violation. The district courts shall have
18 jurisdiction, without regard to the amount in controversy
19 or the citizenship of the parties, to enforce this title and
20 to impose civil penalties under this title.

21 (c) NOTICE.—An aggrieved person shall give any al-
22 leged violator notice at least 60 days prior to commencing
23 an action under this section. No action may be commenced
24 by an aggrieved person under this section if such alleged

1 violator complies with the requirements of this title within
2 such 60-day period and thereafter.

3 (d) COSTS.—The court, in issuing any final order in
4 any action brought under this section, may award costs
5 of litigation (including reasonable attorney and expert wit-
6 ness fees) to any prevailing plaintiff, whenever the court
7 determines such award is appropriate.

8 (e) PENALTIES.—The court, in any action under this
9 section to apply civil penalties, shall have discretion to
10 order that such civil penalties be used for projects which
11 further the policies of this title. The court shall obtain the
12 view of the Assistant Secretary in exercising such discre-
13 tion and selecting any such projects.

14 (f) APPLICATION WITH OSHA.—Nothing in this sec-
15 tion affects enforcement of the Occupational Safety and
16 Health Act of 1970.

17 **SEC. 504. PREEMPTION.**

18 Nothing in this title shall preempt or otherwise affect
19 any other Federal, State, or local law which provides
20 greater protection from health hazards from environ-
21 mental tobacco smoke.

22 **SEC. 505. REGULATIONS.**

23 The Assistant Secretary is authorized to promulgate
24 such regulations, after consulting with the Administrator

1 of the Environmental Protection Agency, as the Assistant
2 Secretary deems necessary to carry out this title.

3 **SEC. 506. EFFECTIVE DATE.**

4 Except as provided in section 507, the provisions of
5 this title shall take effect on the first day of January next
6 following the next regularly scheduled meeting of the State
7 legislature occurring after the date of enactment of this
8 Act at which, under the procedural rules of that legisla-
9 ture, a measure under section 507 may be considered.

10 **SEC. 507. STATE CHOICE.**

11 Any State or local government may opt out of this
12 title by promulgating a State or local law, subject to cer-
13 tification by the Assistant Secretary that the law is as or
14 more protective of the public's health as this title, based
15 on the best available science. Any State or local govern-
16 ment may opt to enforce this title itself, subject to certifi-
17 cation by the Assistant Secretary that the enforcement
18 mechanism will effectively protect the public health.

19 **TITLE VI—APPLICATION TO**
20 **INDIAN TRIBES**

21 **SEC. 601. SHORT TITLE.**

22 This title may be cited as the “Reduction in Tobacco
23 Use and Regulation of Tobacco Products in Indian Coun-
24 try Act of 1998”.

1 **SEC. 602. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that Native Ameri-
3 cans have used tobacco products for recreational, ceremo-
4 nial, and traditional purposes for centuries.

5 (b) PURPOSE.—It is the purpose of this title to—

6 (1) provide for the implementation of this Act
7 with respect to the regulation of tobacco products,
8 and other tobacco-related activities on Indian lands;

9 (2) recognize the historic Native American tra-
10 ditional and ceremonial use of tobacco products, and
11 to preserve and protect the cultural, religious, and
12 ceremonial uses of tobacco by members of Indian
13 tribes;

14 (3) recognize and respect Indian tribal sov-
15 ereignty and tribal authority to make and enforce
16 laws regarding the regulation of tobacco distributors
17 and tobacco products on Indian lands; and

18 (4) ensure that the necessary funding is made
19 available to tribal governments for licensing and en-
20 forcement of tobacco distributors and tobacco prod-
21 ucts on Indian lands.

22 **SEC. 603. APPLICATION OF TITLE TO INDIAN LANDS AND**
23 **TO NATIVE AMERICANS.**

24 (a) IN GENERAL.—The provisions of this Act shall
25 apply to the manufacture, distribution, and sale of tobacco

1 or tobacco products on Indian lands, including such activi-
2 ties of an Indian tribe or member of such tribe.

3 (b) TRADITIONAL USE EXCEPTION.—

4 (1) IN GENERAL.—In recognition of the reli-
5 gious, ceremonial, and traditional uses of tobacco
6 and tobacco products by Indian tribes and the mem-
7 bers of such tribes, nothing in this Act shall be con-
8 strued to permit an infringement upon upon the
9 right of such tribes or members of such tribes to ac-
10 quire, possess, use, or transfer any tobacco or to-
11 bacco product for such purposes, or to infringe upon
12 the ability of minors to participate and use tobacco
13 products for such religious, ceremonial, or tradi-
14 tional purposes.

15 (2) APPLICATION OF PROVISIONS.—Paragraph
16 (1) shall apply only to those quantities of tobacco or
17 tobacco products necessary to fulfill the religious,
18 ceremonial, or traditional purposes of an Indian
19 tribe or the members of such tribe, and shall not be
20 construed to permit the general manufacture, dis-
21 tribution, sale or use of tobacco or tobacco products
22 in a manner that is not in compliance with this Act
23 or the Federal Food, Drug, and Cosmetic Act (21
24 U.S.C. 301 et seq.)

1 (c) LIMITATION.—Nothing in this Act shall be con-
2 strued to permit an Indian tribe or member of such a tribe
3 to acquire, possess, use, or transfer any tobacco or tobacco
4 product in violation of section 2341 of title 18, United
5 States Code, with respect to the transportation of contra-
6 band cigarettes.

7 (d) APPLICATION ON INDIAN LANDS.—

8 (1) IN GENERAL.—The Secretary, in consulta-
9 tion with the Secretary of Interior, shall promulgate
10 regulations to implement this section as necessary to
11 apply this Act and the Food, Drug, and Cosmetic
12 Act (21 U.S.C. 301 et seq.) with respect to tobacco
13 products manufactured, distributed, or sold on In-
14 dian lands.

15 (2) SCOPE.—This Act and the Federal Food,
16 Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)
17 shall apply to the manufacture, distribution and sale
18 of tobacco products on Indian lands, including such
19 activities by Indian tribes and members of such
20 tribes.

21 (3) TRIBAL TOBACCO RETAILER LICENSING
22 PROGRAM.—

23 (A) IN GENERAL.—The requirements of
24 this Act with respect to the licensing of tobacco
25 retailers shall apply to all retailers that sell to-

1 bacco or tobacco products on Indian lands, in-
2 cluding Indian tribes, and members thereof.

3 (B) IMPLEMENTATION.—

4 (i) IN GENERAL.—An Indian tribe
5 may implement and enforce a tobacco re-
6 tailer licensing and enforcement program
7 on its Indian lands consistent with the pro-
8 visions of section 231 if the tribe is eligible
9 under subparagraph (D). For purposes of
10 this clause, section 231 shall be applied to
11 an Indian tribe by substituting “Indian
12 tribe” for “State” each place it appears,
13 and an Indian tribe shall not be ineligible
14 for grants under that section if the Sec-
15 retary applies that section to the tribe by
16 modifying it to address tribal population,
17 land base, and jurisdictional factors.

18 (ii) COOPERATION.—An Indian tribe
19 and State with tobacco retailer licensing
20 programs within adjacent jurisdictions
21 should consult and confer to ensure effec-
22 tive implementation of their respective pro-
23 grams.

24 (C) ENFORCEMENT.—The Secretary may
25 vest the responsibility for implementation and

1 enforcement of a tobacco retailer licensing pro-
2 gram in—

3 (i) the Indian tribe involved;

4 (ii) the State within which the lands
5 of the Indian tribe are located pursuant to
6 a voluntary cooperative agreement entered
7 into by the State and the Indian tribe; or

8 (iii) the Secretary pursuant to sub-
9 paragraph (F).

10 (D) ELIGIBILITY.—To be eligible to imple-
11 ment and enforce a tobacco retailer licensing
12 program under section 231, the Secretary, in
13 consultation with the Secretary of Interior,
14 must find that—

15 (i) the Indian tribe has a governing
16 body that has powers and carries out du-
17 ties that are similar to the powers and du-
18 ties of State or local governments;

19 (ii) the functions to be exercised relate
20 to activities conducted on its Indian lands;
21 and

22 (iii) the Indian tribe is reasonably ex-
23 pected to be capable of carrying out the
24 functions required by the Secretary.

1 (E) DETERMINATIONS.—Not later than 90
2 days after the date on which an Indian tribe
3 submits an application for authority under sub-
4 paragraph (D), the Secretary shall make a de-
5 termination concerning the eligibility of such
6 tribe for such authority. Each tribe found eligi-
7 ble under subparagraph (D) shall be eligible to
8 enter into agreements for block grants under
9 section 231, to conduct a licensing and enforce-
10 ment program pursuant to section 231, and for
11 bonuses under section 232.

12 (F) IMPLEMENTATION BY THE SEC-
13 RETARY.—If the Secretary determines that the
14 Indian tribe is not willing or not qualified to
15 administer a retail licensing and enforcement
16 program, the Secretary, in consultation with the
17 Secretary of Interior, shall promulgate regula-
18 tions for a program for such tribes in the same
19 manner as for States which have not estab-
20 lished a tobacco retailer licensing program
21 under section 231(f).

22 (G) DEFICIENT APPLICATIONS; OPPOR-
23 TUNITY TO CURE.—

24 (i) If the Secretary determines under
25 subparagraph (F) that a Indian tribe is

1 not eligible to establish a tobacco retailer
2 licensing program, the Secretary shall—

3 (I) submit to such tribe, in writ-
4 ing, a statement of the reasons for
5 such determination of ineligibility; and

6 (II) shall assist such tribe in
7 overcoming any deficiencies that re-
8 sulted in the determination of ineli-
9 gibility.

10 (ii) After an opportunity to review
11 and cure such deficiencies, the tribe may
12 re-apply to the Secretary for assistance
13 under this subsection.

14 (H) SECRETARIAL REVIEW.—The Sec-
15 retary may periodically review the tribal tobacco
16 retailer licensing program of a tribe approved
17 pursuant to subparagraph (E), including the ef-
18 fectiveness of the program, the tribe's enforce-
19 ment thereof, and the compatibility of the
20 tribe's program with the program of the State
21 in which the tribe is located. The program shall
22 be subject to all applicable requirements of sec-
23 tion 231.

24 (e) ELIGIBILITY FOR PUBLIC HEALTH FUNDS.—

25 (1) ELIGIBILITY FOR GRANTS.—

1 (A) For each fiscal year the Secretary may
2 award grants to Indian tribes from the federal
3 Account or other federal funds, except a tribe
4 that is not a participating tobacco product man-
5 ufacturer (as defined in section 1402(a), for the
6 same purposes as States and local governments
7 are eligible to receive grants from the Federal
8 Account as provided for in this Act. Indian
9 tribes shall have the flexibility to utilize such
10 grants to meet the unique health care needs of
11 their service populations consistent with the
12 goals and purposes of Federal Indian health
13 care law and policy.

14 (B) In promulgating regulations for the
15 approval and funding of smoking cessation pro-
16 grams under section 221 the Secretary shall en-
17 sure that adequate funding is available to ad-
18 dress the high rate of smoking among Native
19 Americans.

20 (2) HEALTH CARE FUNDING.—

21 (A) INDIAN HEALTH SERVICE.—Each fis-
22 cal year the Secretary shall disburse to the In-
23 dian Health Service from the National Tobacco
24 Settlement Trust Fund an amount determined

1 by the Secretary in consultation with the Sec-
2 retary of the Interior equal to the product of—

3 (i) the ratio of the total Indian health
4 care service population relative to the total
5 population of the United States; and

6 (ii) the amount allocated to the States
7 each year from the State Litigation Trust
8 Account.

9 (B) FUNDING.—The trustees of the Trust
10 Fund shall for each fiscal year transfer to the
11 Secretary from the State Litigation Trust Ac-
12 count the amount determined pursuant to para-
13 graph (A).

14 (C) USE OF HEALTH CARE TRUST
15 FUNDS.—Amounts made available to the Indian
16 Health Service under this paragraph shall be
17 made available to Indian tribes pursuant to the
18 provisions of the Indian Self Determination and
19 Education Assistance Act (25 U.S.C. 450b et
20 seq.), shall be used to reduce tobacco consump-
21 tion, promote smoking cessation, and shall be
22 used to fund health care activities including—

23 (i) clinic and facility design, construc-
24 tion, repair, renovation, maintenance, and
25 improvement;

1 (ii) health care provider services and
2 equipment;

3 (iii) domestic and community sanita-
4 tion associated with clinic and facility con-
5 struction and improvement;

6 (iv) inpatient and outpatient services;
7 and

8 (v) other programs and services which
9 have as their goal raising the health status
10 of Indians.

11 (f) PREEMPTION.—

12 (1) IN GENERAL.—Except as otherwise pro-
13 vided in this section, nothing in this Act shall be
14 construed to prohibit an Indian tribe from imposing
15 requirements, prohibitions, penalties, or other meas-
16 ures to further the purposes of this Act that are in
17 addition to the requirements, prohibitions, or pen-
18 alties required by this Act.

19 (2) PUBLIC EXPOSURE TO SMOKE.—Nothing in
20 this title shall be construed to preempt or otherwise
21 affect any Indian tribe rule or practice that provides
22 greater protections from the health hazard of envi-
23 ronmental tobacco smoke.

1 (g) DISCLAIMER.—Nothing in this Act shall be con-
2 strued to increase or diminish tribal or State jurisdiction
3 on Indian lands with respect to tobacco-related activities.

4 **TITLE VII—TOBACCO CLAIMS**

5 **SEC. 701. DEFINITIONS.**

6 In this title:

7 (1) AFFILIATE.—The term “affiliate” means a
8 person who directly or indirectly owns or controls, is
9 owned or controlled by, or is under common owner-
10 ship or control with, another person. For purposes
11 of this definition, ownership means ownership of an
12 equity interest, or the equivalent thereof, of ten per-
13 cent or more, and person means an individual, part-
14 nership, committee, association, corporation, or any
15 other organization or group of persons.

16 (2) CIVIL ACTION.—The term “civil action”
17 means any action, lawsuit, or proceeding that is not
18 a criminal action.

19 (3) COURT.—The term “court” means any judi-
20 cial or agency court, forum, or tribunal within the
21 United States, including without limitation any Fed-
22 eral, State, or tribal court.

23 (4) FINAL JUDGMENT.—The term “final judg-
24 ment” means a judgment on which all rights of ap-
25 peal or discretionary review have been exhausted or

1 waived or for which the time to appeal or seek such
2 discretionary review has expired.

3 (5) FINAL SETTLEMENT.—The term “final set-
4 tlement” means a settlement agreement that is exe-
5 cuted and approved as necessary to be fully binding
6 on all relevant parties.

7 (6) INDIVIDUAL.—The term “individual” means
8 a human being and does not include a corporation,
9 partnership, unincorporated association, trust, es-
10 tate, or any other public or private entity, State or
11 local government, or Indian tribe.

12 (7) TOBACCO CLAIM.—The term “tobacco
13 claim” means a claim directly or indirectly arising
14 out of, based on, or related to the health-related ef-
15 fects of tobacco products, including without limita-
16 tion a claim arising out of, based on or related to
17 allegations regarding any conduct, statement, or
18 omission respecting the health-related effects of such
19 products.

20 (8) TOBACCO PRODUCT MANUFACTURER.—The
21 term “tobacco product manufacturer” means a per-
22 son who—

23 (A) manufactures tobacco products for sale
24 in the United States after the date of enact-

1 ment of this Act, including tobacco products for
2 sale in the United States through an importer;

3 (B) is, after the date of enactment of this
4 Act, the first purchaser for resale in the United
5 States of tobacco products manufactured for
6 sale outside of the United States;

7 (C) engaged in activities described in sub-
8 paragraph (A) or (B) prior to the date of enact-
9 ment of this Act, has not engaged in such ac-
10 tivities after the date of enactment of this Act,
11 and was not as of June 20, 1997, an affiliate
12 of a tobacco product manufacturer in which the
13 tobacco product manufacturer or its other affili-
14 ates owned a 50 percent or greater interest;

15 (D) is a successor or assign of any of the
16 foregoing;

17 (E) is an entity to which any of the fore-
18 going directly or indirectly makes, after the
19 date of enactment of this Act, a fraudulent con-
20 veyance or a transfer that would otherwise be
21 voidable under part 5 of title 11 of the United
22 States Code, but only to the extent of the inter-
23 est or obligation transferred; or

24 (F) is an affiliate of a tobacco product
25 manufacturer.

1 (9) CASTANO CIVIL ACTIONS.—The term
2 “Castano Civil Actions” means the following civil ac-
3 tions: Gloria Wilkinson Lyons et al. v. American To-
4 bacco Co., et al. (USDC Alabama 96–0881–BH;
5 Agnes McGinty, et al. v. American Tobacco Co., et
6 al. (USDC Arkansas LR–C–96–881); Willard R.
7 Brown, et al. v. R.J. Reynolds Co., et al. (San
8 Diego, California–00711400); Gray Davis & James
9 Ellis, et al. R.J. Reynolds Tobacco Co., et al. (San
10 Diego, California–00706458); Chester Lyons, et al.
11 v. Brown & Williamson Tobacco Corp., et al. (Fulton
12 County, Georgia–E–59346); Rosalyn Peterson, et al.
13 v. American Tobacco Co., et al. (USDC Hawaii–97–
14 00233–HG); Jean Clay , et al. v. American Tobacco
15 Co., et al. (USDC Illinois Benton Division–97–
16 4167–JPG); William J. Norton, et al. v. RJR Na-
17 bisco Holdings Corp., et al. (Madison County, Indi-
18 ana 48D01–9605–CP–0271); Alga Emig, et al. v.
19 American Tobacco Co., et al. (USDC Kansas–97–
20 1121–MLB); Gloria Scott, et al. v. American To-
21 bacco Co., et al. (Orleans Parish, Louisiana–97–
22 1178); Vern Masepohl, et al. v. American Tobacco
23 Co., et al. (USDC Minnesota–3–96–CV–888); Mat-
24 thew Tepper, et al. v. Philip Morris Incorporated, et
25 al (Bergen County, New Jersey–BER–L–4983–97–

1 E); Carol A. Connor, et al. v. American Tobacco Co.,
2 et al. (Bernalillo County, New Mexico—CV96—8464);
3 Edwin Paul Hoskins, et al. v. R.J. Reynolds To-
4 bacco Co., et al.; Josephine Stewart—Lomantz v.
5 Brown & Williamson Tobacco, et al.; Rose Frosina,
6 et al. v. Philip Morris Incorporated, et al.; Catherine
7 Zito, et al. v. American Tobacco Co., et al.; Kevin
8 Mroczkowski, et al. v. Lorillard Tobacco Company,
9 et al. (Supreme Court, New York County, New
10 York—110949 thru 110953); Judith E. Chamberlain,
11 et al. v. American Tobacco Co., et al. (USDC Ohio—
12 1:96CV2005); Brian walls, et al. v. American To-
13 bacco Co., et al. (USDC Oklahoma—97—CV—218—H);
14 Steven R. Arch, et al. v. American Tobacco Co., et
15 al. (USDC Pennsylvania—96—5903—CN); Barreras-
16 Ruiz, et al. v. American Tobacco Co., et al. (USDC
17 Puerto Rico—96—2300—JAF); Joanne Anderson, et
18 al. v. American Tobacco Co., et al. (Know County,
19 Tennessee); Carlis Cole, et al. v. The Tobacco insti-
20 tute, Inc., et al. (USDC Beaumont Texas Division—
21 1:97CV0256); Carrol Jackson, et al. v. Philip Morris
22 Incorporated, et al. (Salt Lake County, Utah—CV
23 No. 98—0901634PI).

1 **SEC. 702. APPLICATION; PREEMPTION.**

2 (a) APPLICATION.—The provisions of this title govern
3 any tobacco claim in any civil action brought in an State,
4 Tribal, or Federal court, including any such claim that
5 has not reached final judgment or final settlement as of
6 the date of enactment of this Act.

7 (b) PREEMPTION.—This title supersedes State law
8 only to the extent that State law applies to a matter cov-
9 ered by this title. Any matter that is not governed by this
10 title, including any standard of liability applicable to a
11 manufacturer, shall be governed by any applicable State,
12 Tribal, or Federal law.

13 (c) CRIMINAL LIABILITY UNTOUCHED.—Nothing in
14 this title shall be construed to limit the criminal liability
15 of tobacco product manufacturers, retailers, or distribu-
16 tors, or their officers, directors, employees, successors, or
17 assigns.

18 **SEC. 703. RULES GOVERNING TOBACCO CLAIMS.**

19 (a) GENERAL CAUSATION PRESUMPTION.—In any
20 civil action to which this title applies brought involving
21 a tobacco claim, there shall be an evidentiary presumption
22 that nicotine is addictive and that the diseases identified
23 as being caused by use of tobacco products in the Center
24 for Disease Control and Prevention Reducing the Health
25 Consequences of Smoking: 25 Years of Progress: A Report
26 of the Surgeon General (United States Public Health

1 Service 1989), The Health Consequences of Smoking: In-
2 voluntary Smoking, (USPHS 1986); and The Health Con-
3 sequences of Using Smokeless Tobacco, (USPHS 1986),
4 are caused in whole or in part by the use of tobacco prod-
5 ucts, (hereinafter referred to as the “general causation
6 presumption”), and a jury empaneled to hear a tobacco
7 claim shall be so instructed. In all other respects, the bur-
8 den of proof as to the issue of whether a plaintiff’s specific
9 disease or injury was caused by smoking shall be governed
10 by the law of the State or Tribe in which the tobacco claim
11 was brought. This general causation presumption shall in
12 no way affect the ability of the defendant to introduce evi-
13 dence or argument which the defendant would otherwise
14 be entitled to present under the law of the State or Tribe
15 in which the tobacco claim was brought to rebut the gen-
16 eral causation presumption, or with respect to general cau-
17 sation, specific causation, or alternative causation, or to
18 introduce any other evidence or argument which the de-
19 fendant would otherwise be entitled to make.

20 (b) ACTIONS AGAINST PARTICIPATING TOBACCO
21 PRODUCT MANUFACTURERS.—In any civil action brought
22 involving a tobacco claim against participating tobacco
23 product manufacturers, as that term is defined in title
24 XIV, the provisions of title XIV apply in conjunction with
25 the provisions of this title.

1 **TITLE VIII—TOBACCO INDUSTRY**
2 **ACCOUNTABILITY REQUIRE-**
3 **MENTS AND EMPLOYEE PRO-**
4 **TECTION FROM REPRISALS**

5 **SEC. 801. ACCOUNTABILITY REQUIREMENTS AND OVER-**
6 **SIGHT OF THE TOBACCO INDUSTRY.**

7 (a) **ACCOUNTABILITY.**—The Secretary, following reg-
8 ular consultation with the Commissioner of Food and
9 Drugs, the Surgeon General, the Director of the Center
10 for Disease Control or the Director’s delegate, and the Di-
11 rector of the Health and Human Services Office of Minor-
12 ity Health shall annually issue a report as provided for
13 in subsection (c).

14 (b) **TOBACCO COMPANY PLAN.**—Within a year after
15 the date of enactment of this Act, each participating to-
16 bacco product manufacturer shall adopt and submit to the
17 Secretary a plan to achieve the required percentage reduc-
18 tions in underage use of tobacco products set forth in sec-
19 tion 201, and thereafter shall update its plan no less fre-
20 quently than annually. The annual report of the Secretary
21 may recommend amendment of any plan to incorporate
22 additional measures to reduce underage tobacco use that
23 are consistent with the provisions of this Act.

24 (c) **ANNUAL REPORT.**—The Secretary shall submit a
25 report to the Congress by January 31 of each year, which

1 shall be published in the Federal Register. The report
2 shall—

3 (1) describe in detail each tobacco product man-
4 ufacturer's compliance with the provisions of this
5 Act and its plan submitted under subsection (b);

6 (2) report on whether each tobacco product
7 manufacturer's efforts to reduce underage smoking
8 are likely to result in attainment of smoking reduc-
9 tion targets under section 201;

10 (3) recommend, where necessary, additional
11 measures individual tobacco companies should un-
12 dertake to meet those targets; and

13 (4) include, where applicable, the extent to
14 which prior panel recommendations have been adopt-
15 ed by each tobacco product manufacturer.

16 **SEC. 802. TOBACCO PRODUCT MANUFACTURER EMPLOYEE**
17 **PROTECTION.**

18 (a) PROHIBITED ACTS.—No tobacco product manu-
19 facturer may discharge, demote, or otherwise discriminate
20 against any employee with respect to compensation, terms,
21 conditions, benefits, or privileges of employment because
22 the employee (or any person acting under a request of the
23 employee)—

24 (1) notified the manufacturer, the Commis-
25 sioner of Food and Drugs, the Attorney General, or

1 any Federal, State, or local public health or law en-
2 forcement authority of an alleged violation of this
3 or any other Act;

4 (2) refused to engage in any practice made un-
5 lawful by such Acts, if the employee has identified
6 the alleged illegality to the manufacturer;

7 (3) testified before Congress or at any Federal
8 or State proceeding regarding any provision (or pro-
9 posed provision) of such Acts;

10 (4) commenced, caused to be commenced, or is
11 about to commence or cause to be commenced a pro-
12 ceeding under such Acts, or a proceeding for the ad-
13 ministration or enforcement of any requirement im-
14 posed under such Acts;

15 (5) testified or is about to testify in any such
16 proceeding; or

17 (6) assisted or participated, or is about to assist
18 or participate, in any manner in such a proceeding
19 or in any other manner in such a proceeding or in
20 any other action to carry out the purposes of such
21 Acts.

22 (b) EMPLOYEE COMPLAINT.—

23 (1) Any employee of a tobacco product manu-
24 facturer who believes that he or she has been dis-
25 charged, demoted, or otherwise discriminated

1 against by any person in violation of subsection (a)
2 of this section may, within 180 days after such viola-
3 tion occurs, file (or have any person file on his or
4 her behalf) a complaint with the Secretary alleging
5 such discharge, demotion, or discrimination. Upon
6 receipt of such a complaint, the Secretary shall no-
7 tify the person named in the complaint of its filing.

8 (2)(A) Upon receipt of a complaint under para-
9 graph (1) of this subsection, the Secretary shall con-
10 duct an investigation of the violation alleged in the
11 complaint. Within 30 days after the receipt of such
12 complaint, the Secretary shall complete such inves-
13 tigation and shall notify in writing the complainant
14 (and any such person acting in his or her behalf)
15 and the person alleged to have committed such viola-
16 tion of the results of the investigation conducted
17 under this paragraph. Within 90 days after the re-
18 ceipt of such complaint, the Secretary shall (unless
19 the proceeding on the complaint is terminated by the
20 Secretary on the basis of a settlement entered into
21 by the Secretary and the person alleged to have com-
22 mitted such violation) issue an order either providing
23 the relief prescribed in subparagraph (B) of this
24 paragraph or denying the complaint. An order of the
25 Secretary shall be made on the record after notice

1 and the opportunity for a hearing in accordance with
2 sections 554 and 556 of title 5, United States Code.
3 Upon the conclusion of such a hearing and the
4 issuance of a recommended decision that the com-
5 plaint has merit, the Secretary shall issue a prelimi-
6 nary order providing the relief prescribed in sub-
7 paragraph (B) of this paragraph, but may not order
8 compensatory damages pending a final order. The
9 Secretary may not enter into a settlement terminat-
10 ing a proceeding on a complaint without the partici-
11 pation and consent of the complainant.

12 (B) If, in response to a complaint under para-
13 graph (1) of this subsection, the Secretary deter-
14 mines that a violation of this paragraph has oc-
15 curred, the Secretary shall order the person who
16 committed such violation to (i) take affirmative ac-
17 tion to abate the violation, and (ii) reinstate the
18 complainant to his or her former position together
19 with compensation (including back pay), terms, con-
20 ditions, and privileges of his or her employment. The
21 Secretary may order such person to provide compen-
22 satory damages to the complainant. If an order is
23 issued under this subparagraph, the Secretary, at
24 the request of the complainant, shall assess the per-
25 son against whom the order is issued a sum equal

1 to the aggregate amount of all costs and expenses
2 (including attorneys' and expert witness fees) rea-
3 sonably incurred (as determined by the Secretary),
4 by the complainant for, or in connection with, the
5 bringing of the complaint upon which the order is
6 issued.

7 (3)(A) The Secretary shall dismiss a complaint
8 filed under paragraph (1) of this subsection, and
9 shall not conduct the investigation required under
10 paragraph (2) of this subsection, unless the com-
11 plainant has made a *prima facie* showing that any
12 behavior described in subsection (a) of this section
13 was a contributing factor in the unfavorable person-
14 nel action alleged in the complaint.

15 (B) Notwithstanding a finding by the Secretary
16 that the complainant has made the showing required
17 by subparagraph (A) of this paragraph, no investiga-
18 tion required under paragraph (2) of this subsection
19 shall be conducted if the manufacturer demonstrates
20 by clear and convincing evidence that it would have
21 taken the same unfavorable personnel action in the
22 absence of such behavior. Relief may not be ordered
23 under paragraph (1) of this subsection if the manu-
24 facturer demonstrates by clear and convincing evi-

1 dence that it would have taken the same unfavorable
2 personnel action in the absence of such behavior.

3 (C) The Secretary may determine that a viola-
4 tion of subsection (a) of this section has occurred
5 only if the complainant has demonstrated that any
6 behavior described in subsection (a) of this section
7 was a contributing factor in unfavorable personnel
8 action alleged in the complaint.

9 (c) JUDICIAL REVIEW.—

10 (1) Any person adversely affected or aggrieved
11 by an order issued under subsection (a) of this sec-
12 tion may obtain review of the order in the United
13 States court of appeals for the circuit in which the
14 violation, with respect to which the order was issued,
15 allegedly occurred. The petition for review must be
16 filed within 60 days after the issuance of the Sec-
17 retary's order. Judicial review shall be available as
18 provided in chapter 7 of title 5, United States Code.
19 The commencement of proceedings under this sub-
20 section shall not, unless ordered by the court, oper-
21 ate as a stay of the Secretary's order.

22 (2) An order of the Secretary with respect to
23 which review could have been obtained under para-
24 graph (1) of this subsection shall not be subject to
25 judicial review in any criminal or civil proceeding.

1 (d) NONCOMPLIANCE.—Whenever a person has failed
2 to comply with an order issued under subsection (b)(2)
3 of this section, the Secretary may file a civil action in the
4 United States district court for the district in which the
5 violation occurred to enforce such order. In actions
6 brought under this subsection, the district courts shall
7 have jurisdiction to grant all appropriate relief, including
8 injunctive relief and compensatory and exemplary dam-
9 ages.

10 (e) ACTION TO ENSURE COMPLIANCE.—

11 (1) Any person on whose behalf an order was
12 issued under subsection (b)(2) of this section may
13 commence a civil action to require compliance with
14 such order against the person to whom such order
15 was issued. The appropriate United States district
16 court shall have jurisdiction to enforce such order,
17 without regard to the amount in controversy or the
18 citizenship of the parties.

19 (2) The court, in issuing any final order under
20 this subsection, may award costs of litigation (in-
21 cluding reasonable attorneys' and expert witness
22 fees) to any party whenever the court determines
23 such award is appropriate.

24 (f) ENFORCEMENT.—Any non-discretionary duty im-
25 posed by this section shall be enforceable in a mandamus

1 proceeding brought under section 1361 of title 28, United
2 States Code.

3 (g) APPLICABILITY TO CERTAIN EMPLOYEES.—Sub-
4 section (a) of this section shall not apply with respect to
5 any employee who, acting without direction from the man-
6 ufacturer (or the agent of the manufacturer) deliberately
7 causes a violation of any requirement of this Act, the Fed-
8 eral Food, Drug, and Cosmetic Act (21 U.S.C. 301 et
9 seq), or any other law or regulation relating to tobacco
10 products.

11 (h) EFFECT ON OTHER LAWS.—This section shall
12 not be construed to expand, diminish, or otherwise affect
13 any right otherwise available to an employee under Fed-
14 eral or State law to redress the employee's discharge or
15 other discriminatory action taken by a tobacco product
16 manufacturer against the employee.

17 (i) POSTING.—The provisions of this section shall be
18 prominently posted in any place of employment to which
19 this section applies.

20 **TITLE IX—PUBLIC DISCLOSURE**
21 **OF TOBACCO INDUSTRY DOC-**
22 **UMENTS**

23 **SEC. 901. FINDINGS.**

24 The Congress finds that—

1 (1) the American tobacco industry has made
2 claims of attorney-client privilege, attorney work
3 product, and trade secrets to protect from public
4 disclosure thousands of internal documents sought
5 by civil litigants;

6 (2) a number of courts have found that these
7 claims of privilege were not made in good faith; and

8 (3) a prompt and full exposition of tobacco doc-
9 uments will—

10 (A) promote understanding by the public
11 of the tobacco industry’s research and practices;
12 and

13 (B) further the purposes of this Act.

14 **SEC. 902. APPLICABILITY.**

15 This title applies to all tobacco product manufactur-
16 ers.

17 **SEC. 903. DOCUMENT DISCLOSURE.**

18 (a) DISCLOSURE TO THE FOOD AND DRUG ADMINIS-
19 TRATION.—

20 (1) Within 60 days after the date of enactment
21 of this Act, each tobacco product manufacturer shall
22 submit to the Food and Drug Administration the
23 documents identified in subsection (c), including
24 documents for which trade secret protection is
25 claimed, with the exception of any document for

1 which privilege is claimed, and identified in accord-
2 ance with subsection (b). Each such manufacturer
3 shall provide the Administration with the privilege
4 and trade secret logs identified under subsection (b).

5 (2) With respect to documents that are claimed
6 to contain trade secret material, unless and until it
7 is finally determined under this title, either through
8 judicial review or because time for judicial review
9 has expired, that such a document does not con-
10 stitute or contain trade secret material, the Adminis-
11 tration shall treat the document as a trade secret in
12 accordance with section 708 of the Federal Food,
13 Drug, and Cosmetic Act (21 U.S.C. 379) and the
14 regulations promulgated thereunder. Nothing herein
15 shall limit the authority of the Administration to ob-
16 tain and use, in accordance with any provision of the
17 Federal Food, Drug, and Cosmetic Act and the reg-
18 ulations promulgated thereunder, any document con-
19 stituting or containing trade secret material. Docu-
20 ments and materials received by the Administration
21 under this provision shall not be obtainable by or re-
22 leasable to the public through section 552 of title 5,
23 United States Code, or any other provision of law,
24 and the only recourse to obtain these documents

1 shall be through the process established by section
2 905.

3 (3) If a document depository is not established
4 under title XIV, the Secretary shall establish by reg-
5 ulation a procedure for making public all documents
6 submitted under paragraph (1) except documents for
7 which trade secret protection has been claimed and
8 for which there has not been a final judicial deter-
9 mination that the document does not contain a trade
10 secret.

11 (b) SEPARATE SUBMISSION OF DOCUMENTS.—

12 (1) PRIVILEGED TRADE SECRET DOCUMENTS.—

13 Any document required to be submitted under sub-
14 section (c) or (d) that is subject to a claim by a to-
15 bacco product manufacturer of attorney-client privi-
16 lege, attorney work product, or trade secret protec-
17 tion shall be so marked and shall be submitted to
18 the panel under section 904 within 30 days after its
19 appointment. Compliance with this subsection shall
20 not be deemed to be a waiver of any applicable claim
21 of privilege or trade secret protection.

22 (2) PRIVILEGE AND TRADE SECRET LOGS.—

23 (A) IN GENERAL.—Within 15 days after
24 submitting documents under paragraph (1),
25 each tobacco product manufacturer shall submit

1 a comprehensive log which identifies on a docu-
2 ment-by-document basis all documents produced
3 for which the manufacturer asserts attorney-cli-
4 ent privilege, attorney work-product, or trade
5 secrecy. With respect to documents for which
6 the manufacturer previously has asserted one or
7 more of the aforementioned privileges or trade
8 secret protection, the manufacturer shall con-
9 duct a good faith *de novo* review of such docu-
10 ments to determine whether such privilege or
11 trade secret protection is appropriate.

12 (B) ORGANIZATION OF LOG.—The log shall
13 be organized in numerical order based upon the
14 document identifier assigned to each document.
15 For each document, the log shall contain—

16 (i) a description of the document, in-
17 cluding type of document, title of docu-
18 ment, name and position or title of each
19 author, addressee, and other recipient who
20 was intended to receive a copy, document
21 date, document purpose, and general sub-
22 ject matter;

23 (ii) an explanation why the document
24 or a portion of the document is privileged
25 or subject to trade secret protection; and

1 (iii) a statement whether any previous
2 claim of privilege or trade secret was de-
3 nied and, if so, in what proceeding.

4 (C) PUBLIC INSPECTION.—Within 5 days
5 of receipt of such a log, the Depository shall
6 make it available for public inspection and re-
7 view.

8 (3) DECLARATION OF COMPLIANCE.—Each to-
9 bacco product manufacturer shall submit to the De-
10 pository a declaration, in accordance with the re-
11 quirements of section 1746 of title 28, United States
12 Code, by an individual with responsibility for the *de*
13 *novo* review of documents, preparation of the privi-
14 lege log, and knowledge of its contents. The declar-
15 ant shall attest to the manufacturer's compliance
16 with the requirements of this subsection pertaining
17 to the review of documents and preparation of a
18 privilege log.

19 (c) DOCUMENT CATEGORIES.—Each tobacco product
20 manufacturer shall submit—

21 (1) every existing document (including any doc-
22 ument subject to a claim of attorney-client privilege,
23 attorney work product, or trade secret protection) in
24 the manufacturer's possession, custody, or control
25 relating, referring, or pertaining to—

1 (A) any studies, research, or analysis of
2 any possible health or pharmacological effects
3 in humans or animals, including addiction, as-
4 sociated with the use of tobacco products or
5 components of tobacco products;

6 (B) the engineering, manipulation, or con-
7 trol of nicotine in tobacco products;

8 (C) the sale or marketing of tobacco prod-
9 ucts;

10 (D) any research involving safer or less
11 hazardous tobacco products;

12 (E) tobacco use by minors; or

13 (F) the relationship between advertising or
14 promotion and the use of tobacco products;

15 (2) all documents produced by any tobacco
16 product manufacturer, the Center of Tobacco Re-
17 search or Tobacco Institute to the Attorney General
18 of any State during discovery in any action brought
19 on behalf of any State and commenced after Janu-
20 ary 1, 1994;

21 (3) all documents produced by any tobacco
22 product manufacturer, Center for Tobacco Research
23 or Tobacco Institute to the Federal Trade Commis-
24 sion in connection with its investigation into the

1 “Joe Camel” advertising campaign and any under-
2 age marketing of tobacco products to minors;

3 (4) all documents produced by any tobacco
4 product manufacturers, the Center for Tobacco Re-
5 search or the Tobacco Institute to litigation adver-
6 saries during discovery in any private litigation mat-
7 ters;

8 (5) all documents produced by any tobacco
9 product manufacturer, the Center for Tobacco Re-
10 search, or the Tobacco Institute in any of the follow-
11 ing private litigation matters:

12 (A) Philip Morris v. American Broadcast-
13 ing Co., Law No. 7609CL94x00181-00 (Cir.
14 Ct. Va. filed Mar. 26, 1994);

15 (B) Estate of Butler v. R.J. Reynolds To-
16 bacco Co., Civ. A. No. 94-5-53 (Cir. Ct. Miss.,
17 filed May 12, 1994);

18 (C) Haines v. Liggett Group, No. 84-CV-
19 678 (D.N.J., filed Feb. 22, 1984); and

20 (D) Cipollone v. Liggett Group, No. 83-
21 CV-284 (D.N.J., filed Aug. 1, 1983);

22 (6) any document produced as evidence or po-
23 tential evidence or submitted to the Depository by
24 tobacco product manufacturers in any of the actions
25 described in paragraph (5), including briefs and

1 other pleadings, memoranda, interrogatories, tran-
2 scripts of depositions, and expert witnesses and con-
3 sultants materials, including correspondence, re-
4 ports, and testimony;

5 (7) any additional documents that any tobacco
6 product manufacturer, the Center for Tobacco Re-
7 search, or the Tobacco Institute have agreed or been
8 required by any court to produce to litigation adver-
9 saries as part of discovery in any action listed in
10 paragraph (2), (3), (4), or (5) but have not yet com-
11 pleted producing as of the date of enactment of this
12 Act;

13 (8) all indices of documents relating to tobacco
14 products and health, with any such indices that are
15 maintained in computerized form placed into the de-
16 pository in both a computerized and hard-copy form;

17 (9) a privilege log describing each document or
18 portion of a document otherwise subject to produc-
19 tion in the actions enumerated in this subsection
20 that any tobacco product manufacturer, the Center
21 for Tobacco Research, or the Tobacco Institute
22 maintains, based upon a good faith *de novo* re-review
23 conducted after the date of enactment of this Act is
24 exempt from public disclosure under this title; and

1 (10) a trade secrecy log describing each docu-
2 ment or portion of a document that any tobacco
3 product manufacturer, the Center for Tobacco Re-
4 search, or the Tobacco Institute maintains is exempt
5 from public disclosure under this title.

6 (d) FUTURE DOCUMENTS.—With respect to docu-
7 ments created after the date of enactment of this Act, the
8 tobacco product manufacturers and their trade associa-
9 tions shall—

10 (1) place the documents in the depository; and

11 (2) provide a copy of the documents to the
12 Food and Drug Administration (with the exception
13 of documents subject to a claim of attorney-client
14 privilege or attorney work product).

15 (1) Every existing document (including any docu-
16 ment subject to a claim of attorney-client privilege,
17 attorney work product, or trade secret protection) in
18 the manufacturer's possession, custody, or control
19 relating, referring, or pertaining to—

20 (A) any studies, research, or analysis of
21 any possible health or pharmacological effects
22 in humans or animals, including addiction, as-
23 sociated with the use of tobacco products or
24 components of tobacco products;

1 (B) the engineering, manipulation, or con-
2 trol of nicotine in tobacco products;

3 (C) the sale or marketing of tobacco prod-
4 ucts;

5 (D) any research involving safer or less
6 hazardous tobacco products;

7 (E) tobacco use by minors; or

8 (F) the relationship between advertising or
9 promotion and the use of tobacco products;

10 (2) Every existing document (including any doc-
11 ument subject to a claim of attorney-client privilege,
12 attorney work product, or trade secret protection) in
13 the manufacturer's possession, custody, or control—

14 (A) produced, or ordered to be produced,
15 by the tobacco product manufacturer in any
16 health-related civil or criminal proceeding, judi-
17 cial or administrative; and

18 (B) that the panel established under sec-
19 tion 906 determines is appropriate for submis-
20 sion.

21 (3) All studies conducted or funded, directly or
22 indirectly, by any tobacco product manufacturer, re-
23 lating to tobacco product use by minors.

1 (4) All documents discussing or referring to the
2 relationship, if any, between advertising and pro-
3 motion and the use of tobacco products by minors.

4 (5) A privilege log describing each document or
5 each portion of a document otherwise subject to pub-
6 lic disclosure under this subsection that any tobacco
7 product manufacturer maintains is exempt from
8 public disclosure under this title.

9 (6) A trade secrecy log describing each docu-
10 ment or each portion of a document otherwise sub-
11 ject to public disclosure under this subsection that
12 any tobacco product manufacturer, the Center for
13 Tobacco Research, or the Tobacco Institute main-
14 tains is exempt from public disclosure under this
15 Act.

16 (e) DOCUMENT IDENTIFICATION AND INDEX.—Docu-
17 ments submitted under this section shall be sequentially
18 numbered and marked to identify the tobacco product
19 manufacturer. Within 15 days after submission of docu-
20 ments, each tobacco product manufacturer shall supply
21 the panel with a comprehensive document index which ref-
22 erences the applicable document categories contained in
23 subsection (b).

1 **SEC. 904. DOCUMENT REVIEW.**

2 (a) **AJUDICATION OF PRIVILEGE CLAIMS.**—An claim
3 of attorney-client privilege, trade secret protection, or
4 other claim of privilege with respect to a document re-
5 quired to be submitted by this title shall be heard by a
6 3-judge panel of the United States District Court for the
7 District of Columbia under section 2284 of title 28,
8 United States Code. The panel may appoint special mas-
9 ters, employ such personnel, and establish such procedures
10 as it deems necessary to carry out its functions under this
11 title.

12 (b) **PRIVILEGE.**—The panel shall apply the attorney-
13 client privilege, the attorney work-product doctrine, and
14 the trade secret doctrine in a manner consistent with Fed-
15 eral law.

16 **SEC. 905. RESOLUTION OF DISPUTED PRIVILEGE AND**
17 **TRADE SECRET CLAIMS.**

18 (a) **IN GENERAL.**—The panel shall determine wheth-
19 er to uphold or reject disputed claims of attorney client
20 privilege, attorney work product, or trade secret protection
21 with respect to documents submitted. Any person may pe-
22 tition the panel to resolve a claim that a document submit-
23 ted may not be disclosed to the public. Such a determina-
24 tion shall be made by a majority of the panel, in writing,
25 and shall be subject to judicial review as specified in this
26 title. All such determinations shall be made solely on con-

1 sideration of the subject document and written submis-
2 sions from the person claiming that the document is privi-
3 leged or protected by trade secrecy and from any person
4 seeking disclosure of the document. The panel shall cause
5 notice of the petition and the panel's decision to be pub-
6 lished in the Federal Register.

7 (b) FINAL DECISION.—The panel may uphold a claim
8 of privilege or protection in its entirety or, in its sole dis-
9 cretion, it may redact that portion of a document that it
10 determines is protected from public disclosure under sub-
11 section (a). Any decision of the panel shall be final unless
12 judicial review is sought under section 906. In the event
13 that judicial review is so sought, the panel's decision shall
14 be stayed pending a final judicial decision.

15 **SEC. 906. APPEAL OF PANEL DECISION.**

16 (a) PETITION; RIGHT OF APPEAL.—Any person may
17 obtain judicial review of a final decision of the panel by
18 filing a petition for review with the United States Court
19 of Appeals for the Federal Circuit within 60 days after
20 the publication of such decision in the Federal Register.
21 A copy of the petition shall be transmitted by the Clerk
22 of the Court to the panel. The panel shall file in the court
23 the record of the proceedings on which the panel based
24 its decision (including any documents reviewed by the
25 panel in *camera*) as provided in section 2112 of title 28,

1 United States Code. Upon the filing of such petition, the
2 court shall have exclusive jurisdiction to affirm or set aside
3 the panel's decision, except that until the filing of the
4 record the panel may modify or set aside its decision.

5 (b) ADDITIONAL EVIDENCE AND ARGUMENTS.—If
6 the any party applies to the court for leave to adduce addi-
7 tional evidence respecting the decision being reviewed and
8 shows to the satisfaction of the court that such additional
9 evidence or arguments are material and that there were
10 reasonable grounds for the failure to adduce such evidence
11 or arguments in the proceedings before the panel, the
12 court may order the panel to provide additional oppor-
13 tunity for the presentation of evidence or arguments in
14 such manner and upon such terms as the court deems
15 proper. The panel may modify its findings or make new
16 findings by reason of the additional evidence or arguments
17 and shall file with the court such modified or new findings,
18 and its recommendation, if any, for the modification or
19 setting aside of the decision being reviewed.

20 (c) STANDARD OF REVIEW; FINALITY OF JUDG-
21 MENTS.—The panel's findings of fact, if supported by sub-
22 stantial evidence on the record taken as a whole, shall be
23 conclusive. The court shall review the panel's legal conclu-
24 sions *de novo*. The judgment of the court affirming or set-
25 ting aside the panel's decision shall be final, subject to

1 review by the Supreme Court of the United States upon
2 certiorari or certification, as provided in section 1254 of
3 title 28, United States Code.

4 (d) PUBLIC DISCLOSURE AFTER FINAL DECISION.—
5 Within 30 days after a final decision that a document,
6 as redacted by the panel or in its entirety, is not protected
7 from disclosure by a claim of attorney-client privilege, at-
8 torney work product, or trade secret protection, the panel
9 shall direct that the document be made available to the
10 Commissioner of Food and Drugs under section 903(a).
11 No Federal, Tribal, or State court shall have jurisdiction
12 to review a claim of attorney-client privilege, attorney
13 work product, or trade secret protection for a document
14 that has lawfully been made available to the public under
15 this subsection.

16 (e) EFFECT OF NON-DISCLOSURE DECISION ON JU-
17 DICIAL PROCEEDINGS.—The panel's decision that a docu-
18 ment is protected by attorney-client privilege, attorney
19 work product, or trade secret protection is binding only
20 for the purpose of protecting the document from disclosure
21 by the Depository. The decision by the panel shall not be
22 construed to prevent a document from being disclosed in
23 a judicial proceeding or interfere with the authority of a
24 court to determine whether a document is admissible or
25 whether its production may be compelled.

1 **SEC. 907. MISCELLANEOUS.**

2 The disclosure process in this title is not intended to
3 affect the Federal Rules of Civil or Criminal Procedure
4 or any Federal law which requires the disclosure of docu-
5 ments or which deals with attorney-client privilege, attor-
6 ney work product, or trade secret protection.

7 **SEC. 908. PENALTIES.**

8 (a) **GOOD FAITH REQUIREMENT.**—Each tobacco
9 product manufacturer shall act in good faith in asserting
10 claims of privilege or trade secret protection based on fact
11 and law. If the panel determines that a tobacco product
12 manufacturer has not acted in good faith with full knowl-
13 edge of the truth of the facts asserted and with a reason-
14 able basis under existing law, the manufacturer shall be
15 assessed costs, which shall include the full administrative
16 costs of handling the claim of privilege, and all attorneys'
17 fees incurred by the panel and any party contesting the
18 privilege. The panel may also impose civil penalties of up
19 to \$50,000 per violation if it determines that the manufac-
20 turer acted in bad faith in asserting a privilege, or know-
21 ingly acted with the intent to delay, frustrate, defraud,
22 or obstruct the panel's determination of privilege, attorney
23 work product, or trade secret protection claims.

24 (b) **FAILURE TO PRODUCE DOCUMENT.**—A failure
25 by a tobacco product manufacturer to produce indexes and
26 documents in compliance with the schedule set forth in

1 this title, or with such extension as may be granted by
2 the panel, shall be punished by a civil penalty of up to
3 \$50,000 per violation. A separate violation occurs for each
4 document the manufacturer has failed to produce in a
5 timely manner. The maximum penalty under this sub-
6 section for a related series of violations is \$5,000,000. In
7 determining the amount of any civil penalty, the panel
8 shall consider the number of documents, length of delay,
9 any history of prior violations, the ability to pay, and such
10 other matters as justice requires. Nothing in this title shall
11 replace or supersede any criminal sanction under title 18,
12 United States Code, or any other provision of law.

13 **SEC. 909. DEFINITIONS.**

14 For the purposes of this title—

15 (1) **DOCUMENT.**—The term “document” in-
16 cludes originals and drafts of any kind of written or
17 graphic matter, regardless of the manner of produc-
18 tion or reproduction, of any kind or description,
19 whether sent or received or neither, and all copies
20 thereof that are different in any way from the origi-
21 nal (whether by interlineation, receipt stamp, nota-
22 tion, indication of copies sent or received or other-
23 wise) regardless of whether confidential, privileged,
24 or otherwise, including any paper, book, account,
25 photograph, blueprint, drawing, agreement, contract,

1 memorandum, advertising material, letter, telegram,
2 object, report, record, transcript, study, note, nota-
3 tion, working paper, intra-office communication,
4 intra-department communication, chart, minute,
5 index sheet, routing sheet, computer software, com-
6 puter data, delivery ticket, flow sheet, price list,
7 quotation, bulletin, circular, manual, summary, re-
8 cording of telephone or other conversation or of
9 interviews, or of conferences, or any other written,
10 recorded, transcribed, punched, taped, filmed, or
11 graphic matter, regardless of the manner produced
12 or reproduced. Such term also includes any tape, re-
13 cording, videotape, computerization, or other elec-
14 tronic recording, whether digital or analog or a com-
15 bination thereof.

16 (2) TRADE SECRET.—The term “trade secret”
17 means any commercially valuable plan, formula,
18 process, or device that is used for making,
19 compounding, processing, or preparing trade com-
20 modities and that can be said to be the end-product
21 of either innovation or substantial effort, for which
22 there is a direct relationship between the plan, for-
23 mula, process, or device and the productive process.

24 (3) CERTAIN ACTIONS DEEMED TO BE PRO-
25 CEEDINGS.—Any action undertaken under this title,

1 including the search, indexing, and production of
 2 documents, is deemed to be a “proceeding” before
 3 the executive branch of the United States.

4 (4) OTHER TERMS.—Any term used in this title
 5 that is defined in section 701 has the meaning given
 6 to it by that section.

7 **TITLE X—LONG-TERM ECO-**
 8 **NOMIC ASSISTANCE FOR**
 9 **FARMERS**

10 **SEC. 1001. SHORT TITLE.**

11 This title may be cited as the “Long-Term Economic
 12 Assistance for Farmers Act” or the “LEAF Act”.

13 **SEC. 1002. DEFINITIONS.**

14 In this title:

15 (1) PARTICIPATING TOBACCO PRODUCER.—The
 16 term “participating tobacco producer” means a
 17 quota holder, quota lessee, or quota tenant.

18 (2) QUOTA HOLDER.—The term “quota holder”
 19 means an owner of a farm on January 1, 1998, for
 20 which a tobacco farm marketing quota or farm acre-
 21 age allotment was established under the Agricultural
 22 Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

23 (3) QUOTA LESSEE.—The term “quota lessee”
 24 means—

1 (A) a producer that owns a farm that pro-
2 duced tobacco pursuant to a lease and transfer
3 to that farm of all or part of a tobacco farm
4 marketing quota or farm acreage allotment es-
5 tablished under the Agricultural Adjustment
6 Act of 1938 (7 U.S.C. 1281 et seq.) for any of
7 the 1995, 1996, or 1997 crop years; or

8 (B) a producer that rented land from a
9 farm operator to produce tobacco under a to-
10 bacco farm marketing quota or farm acreage al-
11 lotment established under the Agricultural Ad-
12 justment Act of 1938 (7 U.S.C. 1281 et seq.)
13 for any of the 1995, 1996, or 1997 crop years.

14 (4) QUOTA TENANT.—The term “quota tenant”
15 means a producer that—

16 (A) is the principal producer, as deter-
17 mined by the Secretary, of tobacco on a farm
18 where tobacco is produced pursuant to a to-
19 bacco farm marketing quota or farm acreage al-
20 lotment established under the Agricultural Ad-
21 justment Act of 1938 (7 U.S.C. 1281 et seq.)
22 for any of the 1995, 1996, or 1997 crop years;
23 and

24 (B) is not a quota holder or quota lessee.

1 (5) SECRETARY.—The term “Secretary”
2 means—

3 (A) in subtitles A and B, the Secretary of
4 Agriculture; and

5 (B) in section 1031, the Secretary of
6 Labor.

7 (6) TOBACCO PRODUCT IMPORTER.—The term
8 “tobacco product importer” has the meaning given
9 the term “importer” in section 5702 of the Internal
10 Revenue Code of 1986.

11 (7) TOBACCO PRODUCT MANUFACTURER.—

12 (A) IN GENERAL.—The term “tobacco
13 product manufacturer” has the meaning given
14 the term “manufacturer of tobacco products” in
15 section 5702 of the Internal Revenue Code of
16 1986.

17 (B) EXCLUSION.—The term “tobacco
18 product manufacturer” does not include a per-
19 son that manufactures cigars or pipe tobacco.

20 (8) TOBACCO WAREHOUSE OWNER.—The term
21 “tobacco warehouse owner” means a warehouseman
22 that participated in an auction market (as defined in
23 the first section of the Tobacco Inspection Act (7
24 U.S.C. 511)) during the 1998 marketing year.

1 (9) FLUE-CURED TOBACCO.—The term “flue-
2 cured tobacco” includes type 21 and type 37 to-
3 bacco.

4 **Subtitle A—Tobacco Community**
5 **Revitalization**

6 **SEC. 1011. AUTHORIZATION OF APPROPRIATIONS.**

7 There are appropriated and transferred to the Sec-
8 retary for each fiscal year such amounts from the National
9 Tobacco Trust Fund established by section 401, other
10 than from amounts in the State Litigation Settlement Ac-
11 count, as may be necessary to carry out the provisions of
12 this title.

13 **SEC. 1012. EXPENDITURES.**

14 The Secretary is authorized, subject to appropria-
15 tions, to make payments under—

16 (1) section 1021 for payments for lost tobacco
17 quota for each of fiscal years 1999 through 2023,
18 but not to exceed \$1,650,000,000 for any fiscal year
19 except to the extent the payments are made in ac-
20 cordance with subsection (d)(12) or (e)(9) of section
21 1021;

22 (2) section 1022 for industry payments for all
23 costs of the Department of Agriculture associated
24 with the production of tobacco;

1 (3) section 1023 for tobacco community eco-
2 nomic development grants, but not to exceed—

3 (A) \$375,000,000 for each of fiscal years
4 1999 through 2008, less any amount required
5 to be paid under section 1022 for the fiscal
6 year; and

7 (B) \$450,000,000 for each of fiscal year
8 2009 through 2023, less any amount required
9 to be paid under section 1022 during the fiscal
10 year;

11 (4) section 1031 for assistance provided under
12 the tobacco worker transition program, but not to
13 exceed \$25,000,000 for any fiscal year; and

14 (5) subpart 9 of part A of title IV of the High-
15 er Education Act of 1965 for farmer opportunity
16 grants, but not to exceed—

17 (A) \$42,500,000 for each of the academic
18 years 1999–2000 through 2003–2004;

19 (B) \$50,000,000 for each of the academic
20 years 2004–2005 through 2008–2009;

21 (C) \$57,500,000 for each of the academic
22 years 2009–2010 through 2013–2014;

23 (D) \$65,000,000 for each of the academic
24 years 2014–2015 through 2018–2019; and

1 (E) \$72,500,000 for each of the academic
2 years 2019–2020 through 2023–2024.

3 **SEC. 1013. BUDGETARY TREATMENT.**

4 This subtitle constitutes budget authority in advance
5 of appropriations Acts and represents the obligation of the
6 Federal Government to provide payments to States and
7 eligible persons in accordance with this title.

8 **Subtitle B—Tobacco Market**
9 **Transition Assistance**

10 **SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.**

11 (a) IN GENERAL.—Beginning with the 1999 market-
12 ing year, the Secretary shall make payments for lost to-
13 bacco quota to eligible quota holders, quota lessees, and
14 quota tenants as reimbursement for lost tobacco quota.

15 (b) ELIGIBILITY.—To be eligible to receive payments
16 under this section, a quota holder, quota lessee, or quota
17 tenant shall—

18 (1) prepare and submit to the Secretary an ap-
19 plication at such time, in such manner, and contain-
20 ing such information as the Secretary may require,
21 including information sufficient to make the dem-
22 onstration required under paragraph (2); and

23 (2) demonstrate to the satisfaction of the Sec-
24 retary that, with respect to the 1997 marketing
25 year—

(A) the producer was a quota holder and realized income (or would have realized income, as determined by the Secretary, but for a medical hardship or crop disaster during the 1997 marketing year) from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

(iii) the rental of all or part of the farm of the quota holder, including the right to produce tobacco, to another tobacco producer; or

(iv) the hiring of a quota tenant to produce tobacco;

(B) the producer was a quota lessee; or

(C) the producer was a quota tenant.

(c) BASE QUOTA LEVEL.—

(1) IN GENERAL.—The Secretary shall determine, for each quota holder, quota lessee, and quota tenant, the base quota level for the 1995 through 1997 marketing years.

(2) QUOTA HOLDERS.—The base quota level for a quota holder shall be equal to the average tobacco farm marketing quota established for the farm

1 owned by the quota holder for the 1995 through
2 1997 marketing years.

3 (3) QUOTA LESSEES.—The base quota level for
4 a quota lessee shall be equal to—

5 (A) 50 percent of the average number of
6 pounds of tobacco quota established for the
7 farm for the 1995 through 1997 marketing
8 years—

9 (i) that was leased and transferred to
10 a farm owned by the quota lessee; or

11 (ii) that was rented to the quota les-
12 see for the right to produce the tobacco;
13 less

14 (B) 25 percent of the average number of
15 pounds of tobacco quota described in subpara-
16 graph (A) for which a quota tenant was the
17 principal producer of the tobacco quota.

18 (4) QUOTA TENANTS.—The base quota level for
19 a quota tenant shall be equal to the sum of—

20 (A) 50 percent of the average number of
21 pounds of tobacco quota established for a farm
22 for the 1995 through 1997 marketing years—

23 (i) that was owned by a quota holder;
24 and

1 (ii) for which the quota tenant was
2 the principal producer of the tobacco on
3 the farm; and

4 (B) 25 percent of the average number of
5 pounds of tobacco quota for the 1995 through
6 1997 marketing years—

7 (i)(I) that was leased and transferred
8 to a farm owned by the quota lessee; or

9 (II) for which the rights to produce
10 the tobacco were rented to the quota les-
11 see; and

12 (ii) for which the quota tenant was
13 the principal producer of the tobacco on
14 the farm.

15 (5) MARKETING QUOTAS OTHER THAN POUND-
16 AGE QUOTAS.—

17 (A) IN GENERAL.—For each type of to-
18 bacco for which there is a marketing quota or
19 allotment (on an acreage basis), the base quota
20 level for each quota holder, quota lessee, or
21 quota tenant shall be determined in accordance
22 with this subsection (based on a poundage con-
23 version) by multiplying—

1 (i) the average tobacco farm market-
2 ing quota or allotment for the 1995
3 through 1997 marketing years; and

4 (ii) the average yield per acre for the
5 farm for the type of tobacco for the mar-
6 keting years.

7 (B) YIELDS NOT AVAILABLE.—If the aver-
8 age yield per acre is not available for a farm,
9 the Secretary shall calculate the base quota for
10 the quota holder, quota lessee, or quota tenant
11 (based on a poundage conversion) by determin-
12 ing the amount equal to the product obtained
13 by multiplying—

14 (i) the average tobacco farm market-
15 ing quota or allotment for the 1995
16 through 1997 marketing years; and

17 (ii) the average county yield per acre
18 for the county in which the farm is located
19 for the type of tobacco for the marketing
20 years.

21 (d) PAYMENTS FOR LOST TOBACCO QUOTA FOR
22 TYPES OF TOBACCO OTHER THAN FLUE-CURED TO-
23 BACCO.—

24 (1) ALLOCATION OF FUNDS.—Of the amounts
25 made available under section 1011(d)(1) for pay-

1 ments for lost tobacco quota, the Secretary shall
2 make available for payments under this subsection
3 an amount that bears the same ratio to the amounts
4 made available as—

5 (A) the sum of all national marketing
6 quotas for all types of tobacco other than flue-
7 cured tobacco during the 1995 through 1997
8 marketing years; bears to

9 (B) the sum of all national marketing
10 quotas for all types of tobacco during the 1995
11 through 1997 marketing years.

12 (2) OPTION TO RELINQUISH QUOTA.—

13 (A) IN GENERAL.—Each quota holder, for
14 types of tobacco other than flue-cured tobacco,
15 shall be given the option to relinquish the farm
16 marketing quota or farm acreage allotment of
17 the quota holder in exchange for a payment
18 made under paragraph (3).

19 (B) NOTIFICATION.—A quota holder shall
20 give notification of the intention of the quota
21 holder to exercise the option at such time and
22 in such manner as the Secretary may require,
23 but not later than January 15, 1999.

1 (3) PAYMENTS FOR LOST TOBACCO QUOTA TO
2 QUOTA HOLDERS EXERCISING OPTIONS TO RELIN-
3 QUISH QUOTA.—

4 (A) IN GENERAL.—Subject to subpara-
5 graph (E), for each of fiscal years 1999
6 through 2008, the Secretary shall make annual
7 payments for lost tobacco quota to each quota
8 holder that has relinquished the farm marketing
9 quota or farm acreage allotment of the quota
10 holder under paragraph (2).

11 (B) AMOUNT.—The amount of a payment
12 made to a quota holder described in subpara-
13 graph (A) for a marketing year shall equal $\frac{1}{10}$
14 of the lifetime limitation established under sub-
15 paragraph (E).

16 (C) TIMING.—The Secretary shall begin
17 making annual payments under this paragraph
18 for the marketing year in which the farm mar-
19 keting quota or farm acreage allotment is relin-
20 quished.

21 (D) ADDITIONAL PAYMENTS.—The Sec-
22 retary may increase annual payments under
23 this paragraph in accordance with paragraph
24 (7)(E) to the extent that funding is available.

1 (E) LIFETIME LIMITATION ON PAY-
2 MENTS.—The total amount of payments made
3 under this paragraph to a quota holder shall
4 not exceed the product obtained by multiplying
5 the base quota level for the quota holder by \$8
6 per pound.

7 (4) REISSUANCE OF QUOTA.—

8 (A) REALLOCATION TO LESSEE OR TEN-
9 ANT.—If a quota holder exercises an option to
10 relinquish a tobacco farm marketing quota or
11 farm acreage allotment under paragraph (2), a
12 quota lessee or quota tenant that was the pri-
13 mary producer during the 1997 marketing year
14 of tobacco pursuant to the farm marketing
15 quota or farm acreage allotment, as determined
16 by the Secretary, shall be given the option of
17 having an allotment of the farm marketing
18 quota or farm acreage allotment reallocated to
19 a farm owned by the quota lessee or quota ten-
20 ant.

21 (B) CONDITIONS FOR REALLOCATION.—

22 (i) TIMING.—A quota lessee or quota
23 tenant that is given the option of having
24 an allotment of a farm marketing quota or
25 farm acreage allotment reallocated to a

1 farm owned by the quota lessee or quota
2 tenant under subparagraph (A) shall have
3 1 year from the date on which a farm mar-
4 keting quota or farm acreage allotment is
5 relinquished under paragraph (2) to exer-
6 cise the option.

7 (ii) LIMITATION ON ACREAGE ALLOT-
8 MENT.—In the case of a farm acreage al-
9 lotment, the acreage allotment determined
10 for any farm subsequent to any realloca-
11 tion under subparagraph (A) shall not ex-
12 ceed 50 percent of the acreage of cropland
13 of the farm owned by the quota lessee or
14 quota tenant.

15 (iii) LIMITATION ON MARKETING
16 QUOTA.—In the case of a farm marketing
17 quota, the marketing quota determined for
18 any farm subsequent to any reallocation
19 under subparagraph (A) shall not exceed
20 an amount determined by multiplying—

21 (I) the average county farm yield,
22 as determined by the Secretary; and

23 (II) 50 percent of the acreage of
24 cropland of the farm owned by the
25 quota lessee or quota tenant.

1 (C) ELIGIBILITY OF LESSEE OR TENANT
2 FOR PAYMENTS.—If a farm marketing quota or
3 farm acreage allotment is reallocated to a quota
4 lessee or quota tenant under subparagraph
5 (A)—

6 (i) the quota lessee or quota tenant
7 shall not be eligible for any additional pay-
8 ments under paragraph (5) or (6) as a re-
9 sult of the reallocation; and

10 (ii) the base quota level for the quota
11 lessee or quota tenant shall not be in-
12 creased as a result of the reallocation.

13 (D) REALLOCATION TO QUOTA HOLDERS
14 WITHIN SAME COUNTY OR STATE.—

15 (i) IN GENERAL.—Except as provided
16 in clause (ii), if there was no quota lessee
17 or quota tenant for the farm marketing
18 quota or farm acreage allotment for a type
19 of tobacco, or if no quota lessee or quota
20 tenant exercises an option of having an al-
21 lotment of the farm marketing quota or
22 farm acreage allotment for a type of to-
23 bacco reallocated, the Secretary shall re-
24 apportion the farm marketing quota or
25 farm acreage allotment among the remain-

1 ing quota holders for the type of tobacco
2 within the same county.

3 (ii) CROSS-COUNTY LEASING.—In a
4 State in which cross-county leasing is au-
5 thorized pursuant to section 319(l) of the
6 Agricultural Adjustment Act of 1938 (7
7 U.S.C. 1314e(l)), the Secretary shall re-
8 apportion the farm marketing quota
9 among the remaining quota holders for the
10 type of tobacco within the same State.

11 (iii) ELIGIBILITY OF QUOTA HOLDER
12 FOR PAYMENTS.—If a farm marketing
13 quota is reapportioned to a quota holder
14 under this subparagraph—

15 (I) the quota holder shall not be
16 eligible for any additional payments
17 under paragraph (5) or (6) as a result
18 of the reapportionment; and

19 (II) the base quota level for the
20 quota holder shall not be increased as
21 a result of the reapportionment.

22 (E) SPECIAL RULE FOR TENANT OF
23 LEASED TOBACCO.—If a quota holder exercises
24 an option to relinquish a tobacco farm market-
25 ing quota or farm acreage allotment under

1 paragraph (2), the farm marketing quota or
2 farm acreage allotment shall be divided evenly
3 between, and the option of reallocating the farm
4 marketing quota or farm acreage allotment
5 shall be offered in equal portions to, the quota
6 lessee and to the quota tenant, if—

7 (i) during the 1997 marketing year,
8 the farm marketing quota or farm acreage
9 allotment was leased and transferred to a
10 farm owned by the quota lessee; and

11 (ii) the quota tenant was the primary
12 producer, as determined by the Secretary,
13 of tobacco pursuant to the farm marketing
14 quota or farm acreage allotment.

15 (5) PAYMENTS FOR LOST TOBACCO QUOTA TO
16 QUOTA HOLDERS.—

17 (A) IN GENERAL.—Except as otherwise
18 provided in this subsection, during any market-
19 ing year in which the national marketing quota
20 for a type of tobacco is less than the average
21 national marketing quota for the 1995 through
22 1997 marketing years, the Secretary shall make
23 payments for lost tobacco quota to each quota
24 holder, for types of tobacco other than flue-
25 cured tobacco, that is eligible under subsection

(b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) \$4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

(I) the basic farm acreage allotment for the farm for the marketing year; and

(II) the average yield per acre for the farm for the type of tobacco.

1 (ii) YIELD NOT AVAILABLE.—If the
2 average yield per acre is not available for
3 a farm, the Secretary shall calculate the
4 poundage conversion for each quota holder
5 during a marketing year by multiplying—

6 (I) the basic farm acreage allot-
7 ment for the farm for the marketing
8 year; and

9 (II) the average county yield per
10 acre for the county in which the farm
11 is located for the type of tobacco.

12 (6) PAYMENTS FOR LOST TOBACCO QUOTA TO
13 QUOTA LESSEES AND QUOTA TENANTS.—Except as
14 otherwise provided in this subsection, during any
15 marketing year in which the national marketing
16 quota for a type of tobacco is less than the average
17 national marketing quota for the type of tobacco for
18 the 1995 through 1997 marketing years, the Sec-
19 retary shall make payments for lost tobacco quota to
20 each quota lessee and quota tenant, for types of to-
21 bacco other than flue-cured tobacco, that is eligible
22 under subsection (b) in an amount that is equal to
23 the product obtained by multiplying—

24 (A) the percentage by which the national
25 marketing quota for the type of tobacco is less

1 than the average national marketing quota for
2 the type of tobacco for the 1995 through 1997
3 marketing years;

4 (B) the base quota level for the quota les-
5 see or quota tenant; and

6 (C) \$4 per pound.

7 (7) LIFETIME LIMITATION ON PAYMENTS.—Ex-
8 cept as otherwise provided in this subsection, the
9 total amount of payments made under this sub-
10 section to a quota holder, quota lessee, or quota ten-
11 ant during the lifetime of the quota holder, quota
12 lessee, or quota tenant shall not exceed the product
13 obtained by multiplying—

14 (A) the base quota level for the quota hold-
15 er, quota lessee, or quota tenant; and

16 (B) \$8 per pound.

17 (8) LIMITATIONS ON AGGREGATE ANNUAL PAY-
18 MENTS.—

19 (A) IN GENERAL.—Except as otherwise
20 provided in this paragraph, the total amount
21 payable under this subsection for any marketing
22 year shall not exceed the amount made avail-
23 able under paragraph (1).

24 (B) ACCELERATED PAYMENTS.—Para-
25 graph (1) shall not apply if accelerated pay-

1 ments for lost tobacco quota are made in ac-
2 cordance with paragraph (12).

3 (C) REDUCTIONS.—If the sum of the
4 amounts determined under paragraphs (3), (5),
5 and (6) for a marketing year exceeds the
6 amount made available under paragraph (1),
7 the Secretary shall make a pro rata reduction
8 in the amounts payable under paragraphs (5)
9 and (6) to quota holders, quota lessees, and
10 quota tenants under this subsection to ensure
11 that the total amount of payments for lost to-
12 bacco quota does not exceed the amount made
13 available under paragraph (1).

14 (D) ROLLOVER OF PAYMENTS FOR LOST
15 TOBACCO QUOTA.—Subject to subparagraph
16 (A), if the Secretary makes a reduction in ac-
17 cordance with subparagraph (C), the amount of
18 the reduction shall be applied to the next mar-
19 keting year and added to the payments for lost
20 tobacco quota for the marketing year.

21 (E) ADDITIONAL PAYMENTS TO QUOTA
22 HOLDERS EXERCISING OPTION TO RELINQUISH
23 QUOTA.—If the amount made available under
24 paragraph (1) exceeds the sum of the amounts
25 determined under paragraphs (3), (5), and (6)

1 for a marketing year, the Secretary shall dis-
2 tribute the amount of the excess pro rata to
3 quota holders that have exercised an option to
4 relinquish a tobacco farm marketing quota or
5 farm acreage allotment under paragraph (2) by
6 increasing the amount payable to each such
7 holder under paragraph (3).

8 (9) SUBSEQUENT SALE AND TRANSFER OF
9 QUOTA.—Effective beginning with the 1999 market-
10 ing year, on the sale and transfer of a farm market-
11 ing quota or farm acreage allotment under section
12 316(g) or 319(g) of the Agricultural Adjustment Act
13 of 1938 (7 U.S.C. 1314b(g), 1314e(g))—

14 (A) the person that sold and transferred
15 the quota or allotment shall have—

16 (i) the base quota level attributable to
17 the person reduced by the base quota level
18 attributable to the quota that is sold and
19 transferred; and

20 (ii) the lifetime limitation on pay-
21 ments established under paragraph (7) at-
22 tributable to the person reduced by the
23 product obtained by multiplying—

24 (I) the base quota level attrib-
25 utable to the quota; and

1 (II) \$8 per pound; and

2 (B) if the quota or allotment has never
3 been relinquished by a previous quota holder
4 under paragraph (2), the person that acquired
5 the quota shall have—

6 (i) the base quota level attributable to
7 the person increased by the base quota
8 level attributable to the quota that is sold
9 and transferred; and

10 (ii) the lifetime limitation on pay-
11 ments established under paragraph (7) at-
12 tributable to the person—

13 (I) increased by the product ob-
14 tained by multiplying—

15 (aa) the base quota level at-
16 tributable to the quota; and

17 (bb) \$8 per pound; but

18 (II) decreased by any payments
19 under paragraph (5) for lost tobacco
20 quota previously made that are attrib-
21 utable to the quota that is sold and
22 transferred.

23 (10) SALE OR TRANSFER OF FARM.—On the
24 sale or transfer of ownership of a farm that is owned
25 by a quota holder, the base quota level established

1 under subsection (c), the right to payments under
2 paragraph (5), and the lifetime limitation on pay-
3 ments established under paragraph (7) shall transfer
4 to the new owner of the farm to the same extent
5 and in the same manner as those provisions applied
6 to the previous quota holder.

7 (11) DEATH OF QUOTA LESSEE OR QUOTA TEN-
8 ANT.—If a quota lessee or quota tenant that is enti-
9 tled to payments under this subsection dies and is
10 survived by a spouse or 1 or more dependents, the
11 right to receive the payments shall transfer to the
12 surviving spouse or, if there is no surviving spouse,
13 to the surviving dependents in equal shares.

14 (12) ACCELERATION OF PAYMENTS.—

15 (A) IN GENERAL.—On the occurrence of
16 any of the events described in subparagraph
17 (B), the Secretary shall make an accelerated
18 lump sum payment for lost tobacco quota as es-
19 tablished under paragraphs (5) and (6) to each
20 quota holder, quota lessee, and quota tenant for
21 any affected type of tobacco in accordance with
22 subparagraph (C).

23 (B) TRIGGERING EVENTS.—The Secretary
24 shall make accelerated payments under sub-

1 paragraph (A) if after the date of enactment of
2 this Act—

3 (i) subject to subparagraph (D), for 3
4 consecutive marketing years, the national
5 marketing quota or national acreage allot-
6 ment for a type of tobacco is less than 50
7 percent of the national marketing quota or
8 national acreage allotment for the type of
9 tobacco for the 1998 marketing year; or

10 (ii) Congress repeals or makes ineffec-
11 tive, directly or indirectly, any provision
12 of—

13 (I) section 316 of the Agricul-
14 tural Adjustment Act of 1938 (7
15 U.S.C. 1314b);

16 (II) section 319 of the Agricul-
17 tural Adjustment Act of 1938 (7
18 U.S.C. 1314e);

19 (III) section 106 of the Agricul-
20 tural Act of 1949 (7 U.S.C. 1445);

21 (IV) section 106A of the Agricul-
22 tural Act of 1949 (7 U.S.C. 1445–1);
23 or

24 (V) section 106B of the Agricul-
25 tural Act of 1949 (7 U.S.C. 1445–2).

1 (C) AMOUNT.—The amount of the acceler-
2 ated payments made to each quota holder,
3 quota lessee, and quota tenant under this sub-
4 section shall be equal to—

5 (i) the amount of the lifetime limita-
6 tion established for the quota holder, quota
7 lessee, or quota tenant under paragraph
8 (7); less

9 (ii) any payments for lost tobacco
10 quota received by the quota holder, quota
11 lessee, or quota tenant before the occur-
12 rence of any of the events described in sub-
13 paragraph (B).

14 (D) REFERENDUM VOTE NOT A TRIGGER-
15 ING EVENT.—A referendum vote of producers
16 for any type of tobacco that results in the na-
17 tional marketing quota or national acreage al-
18 lotment not being in effect for the type of to-
19 bacco shall not be considered a triggering event
20 under this paragraph.

21 (13) BAN ON SUBSEQUENT SALE OR LEASING
22 OF FARM MARKETING QUOTA OR FARM ACREAGE AL-
23 LOTMENT TO QUOTA HOLDERS EXERCISING OPTION
24 TO RELINQUISH QUOTA.—No quota holder that exer-
25 cises the option to relinquish a farm marketing

1 quota or farm acreage allotment for any type of to-
 2 bacco under paragraph (2) shall be eligible to ac-
 3 quire a farm marketing quota or farm acreage allot-
 4 ment for the type of tobacco, or to obtain the lease
 5 or transfer of a farm marketing quota or farm acre-
 6 age allotment for the type of tobacco, for a period
 7 of 25 crop years after the date on which the quota
 8 or allotment was relinquished.

9 (e) PAYMENTS FOR LOST TOBACCO QUOTA FOR
 10 FLUE-CURED TOBACCO.—

11 (1) ALLOCATION OF FUNDS.—Of the amounts
 12 made available under section 1011(d)(1) for pay-
 13 ments for lost tobacco quota, the Secretary shall
 14 make available for payments under this subsection
 15 an amount that bears the same ratio to the amounts
 16 made available as—

17 (A) the sum of all national marketing
 18 quotas for flue-cured tobacco during the 1995
 19 through 1997 marketing years; bears to

20 (B) the sum of all national marketing
 21 quotas for all types of tobacco during the 1995
 22 through 1997 marketing years.

23 (2) RELINQUISHMENT OF QUOTA.—

24 (A) IN GENERAL.—Each quota holder of
 25 flue-cured tobacco shall relinquish the farm

1 marketing quota or farm acreage allotment in
2 exchange for a payment made under paragraph
3 (3) due to the transition from farm marketing
4 quotas as provided under section 317 of the Ag-
5 ricultural Adjustment Act of 1938 for flue-
6 cured tobacco to individual tobacco production
7 permits as provided under section 317A of the
8 Agricultural Adjustment Act of 1938 for flue-
9 cured tobacco.

10 (B) NOTIFICATION.—The Secretary shall
11 notify the quota holders of the relinquishment
12 of their quota or allotment at such time and in
13 such manner as the Secretary may require, but
14 not later than November 15, 1998.

15 (3) PAYMENTS FOR LOST FLUE-CURED TO-
16 BACCO QUOTA TO QUOTA HOLDERS THAT RELIN-
17 QUISH QUOTA.—

18 (A) IN GENERAL.—For each of fiscal years
19 1999 through 2008, the Secretary shall make
20 annual payments for lost flue-cured tobacco to
21 each quota holder that has relinquished the
22 farm marketing quota or farm acreage allot-
23 ment of the quota holder under paragraph (2).

24 (B) AMOUNT.—The amount of a payment
25 made to a quota holder described in subpara-

graph (A) for a marketing year shall equal $\frac{1}{10}$ of the lifetime limitation established under paragraph (6).

(C) TIMING.—The Secretary shall begin making annual payments under this paragraph for the marketing year in which the farm marketing quota or farm acreage allotment is relinquished.

(D) ADDITIONAL PAYMENTS.—The Secretary may increase annual payments under this paragraph in accordance with paragraph (7)(E) to the extent that funding is available.

(4) PAYMENTS FOR LOST FLUE-CURED TOBACCO QUOTA TO QUOTA LESSEES AND QUOTA TENANTS THAT HAVE NOT RELINQUISHED PERMITS.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, during any marketing year in which the national marketing quota for flue-cured tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota lessee or quota tenant that—

(i) is eligible under subsection (b);

1 (ii) has been issued an individual to-
2 bacco production permit under section
3 317A(b) of the Agricultural Adjustment
4 Act of 1938; and

5 (iii) has not exercised an option to re-
6 linquish the permit.

7 (B) AMOUNT.—The amount of a payment
8 made to a quota lessee or quota tenant de-
9 scribed in subparagraph (A) for a marketing
10 year shall be equal to the product obtained by
11 multiplying—

12 (i) the number of pounds by which the
13 individual marketing limitation established
14 for the permit is less than twice the base
15 quota level for the quota lessee or quota
16 tenant; and

17 (ii) \$2 per pound.

18 (5) PAYMENTS FOR LOST FLUE-CURED TO-
19 BACCO QUOTA TO QUOTA LESSEES AND QUOTA TEN-
20 ANTS THAT HAVE RELINQUISHED PERMITS.—

21 (A) IN GENERAL.—For each of fiscal years
22 1999 through 2008, the Secretary shall make
23 annual payments for lost flue-cured tobacco
24 quota to each quota lessee and quota tenant
25 that has relinquished an individual tobacco pro-

1 duction permit under section 317A(b)(5) of the
2 Agricultural Adjustment Act of 1938.

3 (B) AMOUNT.—The amount of a payment
4 made to a quota lessee or quota tenant de-
5 scribed in subparagraph (A) for a marketing
6 year shall be equal to $\frac{1}{10}$ of the lifetime limita-
7 tion established under paragraph (6).

8 (C) TIMING.—The Secretary shall begin
9 making annual payments under this paragraph
10 for the marketing year in which the individual
11 tobacco production permit is relinquished.

12 (D) ADDITIONAL PAYMENTS.—The Sec-
13 retary may increase annual payments under
14 this paragraph in accordance with paragraph
15 (7)(E) to the extent that funding is available.

16 (E) PROHIBITION AGAINST PERMIT EXPAN-
17 SION.—A quota lessee or quota tenant that re-
18 ceives a payment under this paragraph shall be
19 ineligible to receive any new or increased to-
20 bacco production permit from the county pro-
21 duction pool established under section
22 317A(b)(8) of the Agricultural Adjustment Act
23 of 1938.

24 (6) LIFETIME LIMITATION ON PAYMENTS.—Ex-
25 cept as otherwise provided in this subsection, the

1 total amount of payments made under this sub-
2 section to a quota holder, quota lessee, or quota ten-
3 ant during the lifetime of the quota holder, quota
4 lessee, or quota tenant shall not exceed the product
5 obtained by multiplying—

6 (A) the base quota level for the quota hold-
7 er, quota lessee, or quota tenant; and

8 (B) \$8 per pound.

9 (7) LIMITATIONS ON AGGREGATE ANNUAL PAY-
10 MENTS.—

11 (A) IN GENERAL.—Except as otherwise
12 provided in this paragraph, the total amount
13 payable under this subsection for any marketing
14 year shall not exceed the amount made avail-
15 able under paragraph (1).

16 (B) ACCELERATED PAYMENTS.—Para-
17 graph (1) shall not apply if accelerated pay-
18 ments for lost flue-cured tobacco quota are
19 made in accordance with paragraph (9).

20 (C) REDUCTIONS.—If the sum of the
21 amounts determined under paragraphs (3), (4),
22 and (5) for a marketing year exceeds the
23 amount made available under paragraph (1),
24 the Secretary shall make a pro rata reduction
25 in the amounts payable under paragraph (4) to

1 quota lessees and quota tenants under this sub-
2 section to ensure that the total amount of pay-
3 ments for lost flue-cured tobacco quota does not
4 exceed the amount made available under para-
5 graph (1).

6 (D) ROLLOVER OF PAYMENTS FOR LOST
7 FLUE-CURED TOBACCO QUOTA.—Subject to
8 subparagraph (A), if the Secretary makes a re-
9 duction in accordance with subparagraph (C),
10 the amount of the reduction shall be applied to
11 the next marketing year and added to the pay-
12 ments for lost flue-cured tobacco quota for the
13 marketing year.

14 (E) ADDITIONAL PAYMENTS TO QUOTA
15 HOLDERS EXERCISING OPTION TO RELINQUISH
16 QUOTAS OR PERMITS, OR TO QUOTA LESSEES
17 OR QUOTA TENANTS RELINQUISHING PER-
18 MITS.—If the amount made available under
19 paragraph (1) exceeds the sum of the amounts
20 determined under paragraphs (3), (4), and (5)
21 for a marketing year, the Secretary shall dis-
22 tribute the amount of the excess pro rata to
23 quota holders by increasing the amount payable
24 to each such holder under paragraphs (3) and
25 (5).

1 (8) DEATH OF QUOTA HOLDER, QUOTA LESSEE,
2 OR QUOTA TENANT.—If a quota holder, quota lessee
3 or quota tenant that is entitled to payments under
4 paragraph (4) or (5) dies and is survived by a
5 spouse or 1 or more descendants, the right to receive
6 the payments shall transfer to the surviving spouse
7 or, if there is no surviving spouse, to the surviving
8 descendants in equal shares.

9 (9) ACCELERATION OF PAYMENTS.—

10 (A) IN GENERAL.—On the occurrence of
11 any of the events described in subparagraph
12 (B), the Secretary shall make an accelerated
13 lump sum payment for lost flue-cured tobacco
14 quota as established under paragraphs (3), (4),
15 and (5) to each quota holder, quota lessee, and
16 quota tenant for flue-cured tobacco in accord-
17 ance with subparagraph (C).

18 (B) TRIGGERING EVENTS.—The Secretary
19 shall make accelerated payments under sub-
20 paragraph (A) if after the date of enactment of
21 this Act—

22 (i) subject to subparagraph (D), for 3
23 consecutive marketing years, the national
24 marketing quota or national acreage allot-
25 ment for flue-cured tobacco is less than 50

1 percent of the national marketing quota or
2 national acreage allotment for flue-cured
3 tobacco for the 1998 marketing year; or

4 (ii) Congress repeals or makes ineffec-
5 tive, directly or indirectly, any provision
6 of—

7 (I) section 316 of the Agricul-
8 tural Adjustment Act of 1938 (7
9 U.S.C. 1314b);

10 (II) section 319 of the Agricul-
11 tural Adjustment Act of 1938 (7
12 U.S.C. 1314e);

13 (III) section 106 of the Agricul-
14 tural Act of 1949 (7 U.S.C. 1445);

15 (IV) section 106A of the Agricul-
16 tural Act of 1949 (7 U.S.C. 1445–1);

17 (V) section 106B of the Agricul-
18 tural Act of 1949 (7 U.S.C. 1445–2);

19 or

20 (VI) section 317A of the Agricul-
21 tural Adjustment Act of 1938.

22 (C) AMOUNT.—The amount of the acceler-
23 ated payments made to each quota holder,
24 quota lessee, and quota tenant under this sub-
25 section shall be equal to—

1 (i) the amount of the lifetime limita-
 2 tion established for the quota holder, quota
 3 lessee, or quota tenant under paragraph
 4 (6); less

5 (ii) any payments for lost flue-cured
 6 tobacco quota received by the quota holder,
 7 quota lessee, or quota tenant before the oc-
 8 currence of any of the events described in
 9 subparagraph (B).

10 (D) REFERENDUM VOTE NOT A TRIGGER-
 11 ING EVENT.—A referendum vote of producers
 12 for flue-cured tobacco that results in the na-
 13 tional marketing quota or national acreage al-
 14 lotment not being in effect for flue-cured to-
 15 bacco shall not be considered a triggering event
 16 under this paragraph.

17 **SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT**
 18 **COSTS ASSOCIATED WITH TOBACCO PRODUC-**
 19 **TION.**

20 (a) IN GENERAL.—The Secretary shall use such
 21 amounts remaining unspent and obligated at the end of
 22 each fiscal year to reimburse the Secretary for—

23 (1) costs associated with the administration of
 24 programs established under this title and amend-
 25 ments made by this title;

1 (2) costs associated with the administration of
2 the tobacco quota and price support programs ad-
3 ministered by the Secretary;

4 (3) costs to the Federal Government of carrying
5 out crop insurance programs for tobacco;

6 (4) costs associated with all agricultural re-
7 search, extension, or education activities associated
8 with tobacco;

9 (5) costs associated with the administration of
10 loan association and cooperative programs for to-
11 bacco producers, as approved by the Secretary; and

12 (6) any other costs incurred by the Department
13 of Agriculture associated with the production of to-
14 bacco.

15 (b) LIMITATIONS.—Amounts made available under
16 subsection (a) may not be used—

17 (1) to provide direct benefits to quota holders,
18 quota lessees, or quota tenants; or

19 (2) in a manner that results in a decrease, or
20 an increase relative to other crops, in the amount of
21 the crop insurance premiums assessed to participat-
22 ing tobacco producers under the Federal Crop Insur-
23 ance Act (7 U.S.C. 1501 et seq.).

1 (c) DETERMINATIONS.—Not later than September
2 30, 1998, and each fiscal year thereafter, the Secretary
3 shall determine—

4 (1) the amount of costs described in subsection
5 (a); and

6 (2) the amount that will be provided under this
7 section as reimbursement for the costs.

8 **SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOP-**
9 **MENT GRANTS.**

10 (a) AUTHORITY.—The Secretary shall make grants to
11 tobacco-growing States in accordance with this section to
12 enable the States to carry out economic development ini-
13 tiatives in tobacco-growing communities.

14 (b) APPLICATION.—To be eligible to receive payments
15 under this section, a State shall prepare and submit to
16 the Secretary an application at such time, in such manner,
17 and containing such information as the Secretary may re-
18 quire, including—

19 (1) a description of the activities that the State
20 will carry out using amounts received under the
21 grant;

22 (2) a designation of an appropriate State agen-
23 cy to administer amounts received under the grant;
24 and

1 (3) a description of the steps to be taken to en-
2 sure that the funds are distributed in accordance
3 with subsection (e).

4 (c) AMOUNT OF GRANT.—

5 (1) IN GENERAL.—From the amounts available
6 to carry out this section for a fiscal year, the Sec-
7 retary shall allot to each State an amount that bears
8 the same ratio to the amounts available as the total
9 farm income of the State derived from the produc-
10 tion of tobacco during the 1995 through 1997 mar-
11 keting years (as determined under paragraph (2))
12 bears to the total farm income of all States derived
13 from the production of tobacco during the 1995
14 through 1997 marketing years.

15 (2) TOBACCO INCOME.—For the 1995 through
16 1997 marketing years, the Secretary shall determine
17 the amount of farm income derived from the produc-
18 tion of tobacco in each State and in all States.

19 (d) PAYMENTS.—

20 (1) IN GENERAL.—A State that has an applica-
21 tion approved by the Secretary under subsection (b)
22 shall be entitled to a payment under this section in
23 an amount that is equal to its allotment under sub-
24 section (c).

1 (2) FORM OF PAYMENTS.—The Secretary may
2 make payments under this section to a State in in-
3 stallments, and in advance or by way of reimburse-
4 ment, with necessary adjustments on account of
5 overpayments or underpayments, as the Secretary
6 may determine.

7 (3) REALLOTMENTS.—Any portion of the allot-
8 ment of a State under subsection (c) that the Sec-
9 retary determines will not be used to carry out this
10 section in accordance with an approved State appli-
11 cation required under subsection (b), shall be reallocot-
12 ted by the Secretary to other States in proportion to
13 the original allotments to the other States.

14 (e) USE AND DISTRIBUTION OF FUNDS.—

15 (1) IN GENERAL.—Amounts received by a State
16 under this section shall be used to carry out eco-
17 nomic development activities, including—

18 (A) rural business enterprise activities de-
19 scribed in subsections (c) and (e) of section
20 310B of the Consolidated Farm and Rural De-
21 velopment Act (7 U.S.C. 1932);

22 (B) down payment loan assistance pro-
23 grams that are similar to the program described
24 in section 310E of the Consolidated Farm and
25 Rural Development Act (7 U.S.C. 1935);

1 (C) activities designed to help create pro-
2 ductive farm or off-farm employment in rural
3 areas to provide a more viable economic base
4 and enhance opportunities for improved in-
5 comes, living standards, and contributions by
6 rural individuals to the economic and social de-
7 velopment of tobacco communities;

8 (D) activities that expand existing infra-
9 structure, facilities, and services to capitalize on
10 opportunities to diversify economies in tobacco
11 communities and that support the development
12 of new industries or commercial ventures;

13 (E) activities by agricultural organizations
14 that provide assistance directly to participating
15 tobacco producers to assist in developing other
16 agricultural activities that supplement tobacco-
17 producing activities;

18 (F) initiatives designed to create or expand
19 locally owned value-added processing and mar-
20 keting operations in tobacco communities;

21 (G) technical assistance activities by per-
22 sons to support farmer-owned enterprises, or
23 agriculture-based rural development enterprises,
24 of the type described in section 252 or 253 of

1 the Trade Act of 1974 (19 U.S.C. 2342, 2343);
2 and

3 (H) initiatives designed to partially com-
4 pensate tobacco warehouse owners for lost reve-
5 nues and assist the tobacco warehouse owners
6 in establishing successful business enterprises.

7 (2) TOBACCO-GROWING COUNTIES.—Assistance
8 may be provided by a State under this section only
9 to assist a county in the State that has been deter-
10 mined by the Secretary to have in excess of
11 \$100,000 in income derived from the production of
12 tobacco during 1 or more of the 1995 through 1997
13 marketing years. For purposes of this section, the
14 term “tobacco-growing county” includes a political
15 subdivision surrounded within a State by a county
16 that has been determined by the Secretary to have
17 in excess of \$100,000 in income derived from the
18 production of tobacco during 1 or more of the 1995
19 through 1997 marketing years.

20 (3) DISTRIBUTION.—

21 (A) ECONOMIC DEVELOPMENT ACTIVI-
22 TIES.—Not less than 20 percent of the amounts
23 received by a State under this section shall be
24 used to carry out—

1 (i) economic development activities de-
2 scribed in subparagraph (E) or (F) of
3 paragraph (1); or

4 (ii) agriculture-based rural develop-
5 ment activities described in paragraph
6 (1)(G).

7 (B) TECHNICAL ASSISTANCE ACTIVI-
8 TIES.—Not less than 4 percent of the amounts
9 received by a State under this section shall be
10 used to carry out technical assistance activities
11 described in paragraph (1)(G).

12 (C) TOBACCO WAREHOUSE OWNER INITIA-
13 TIVES.—Not less than 6 percent of the amounts
14 received by a State under this section during
15 each of fiscal years 1999 through 2008 shall be
16 used to carry out initiatives described in para-
17 graph (1)(H).

18 (D) TOBACCO-GROWING COUNTIES.—To be
19 eligible to receive payments under this section,
20 a State shall demonstrate to the Secretary that
21 funding will be provided, during each 5-year pe-
22 riod for which funding is provided under this
23 section, for activities in each county in the
24 State that has been determined under para-
25 graph (2) to have in excess of \$100,000 in in-

1 come derived from the production of tobacco, in
2 amounts that are at least equal to the product
3 obtained by multiplying—

4 (i) the ratio that the tobacco produc-
5 tion income in the county determined
6 under paragraph (2) bears to the total to-
7 bacco production income for the State de-
8 termined under subsection (c); and

9 (ii) 50 percent of the total amounts
10 received by a State under this section dur-
11 ing the 5-year period.

12 (f) PREFERENCES IN HIRING.—A State may require
13 recipients of funds under this section to provide a pref-
14 erence in employment to—

15 (1) an individual who—

16 (A) during the 1998 calendar year, was
17 employed in the manufacture, processing, or
18 warehousing of tobacco or tobacco products, or
19 resided, in a county described in subsection
20 (e)(2); and

21 (B) is eligible for assistance under the to-
22 bacco worker transition program established
23 under section 1031; or

24 (2) an individual who—

1 (A) during the 1998 marketing year, car-
2 ried out tobacco quota or relevant tobacco pro-
3 duction activities in a county described in sub-
4 section (e)(2);

5 (B) is eligible for a farmer opportunity
6 grant under subpart 9 of part A of title IV of
7 the Higher Education Act of 1965; and

8 (C) has successfully completed a course of
9 study at an institution of higher education.

10 (g) MAINTENANCE OF EFFORT.—

11 (1) IN GENERAL.—Subject to paragraph (2), a
12 State shall provide an assurance to the Secretary
13 that the amount of funds expended by the State and
14 all counties in the State described in subsection
15 (e)(2) for any activities funded under this section for
16 a fiscal year is not less than 90 percent of the
17 amount of funds expended by the State and counties
18 for the activities for the preceding fiscal year.

19 (2) REDUCTION OF GRANT AMOUNT.—If a
20 State does not provide an assurance described in
21 paragraph (1), the Secretary shall reduce the
22 amount of the grant determined under subsection (c)
23 by an amount equal to the amount by which the
24 amount of funds expended by the State and counties
25 for the activities is less than 90 percent of the

1 amount of funds expended by the State and counties
 2 for the activities for the preceding fiscal year, as de-
 3 termined by the Secretary.

4 (3) FEDERAL FUNDS.—For purposes of this
 5 subsection, the amount of funds expended by a State
 6 or county shall not include any amounts made avail-
 7 able by the Federal Government.

8 **SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.**

9 The Agricultural Adjustment Act of 1938 is amended
 10 by inserting after section 317 (7 U.S.C. 1314c) the follow-
 11 ing:

12 **“SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.**

13 “(a) DEFINITIONS.—In this section:

14 “(1) INDIVIDUAL ACREAGE LIMITATION.—The
 15 term ‘individual acreage limitation’ means the num-
 16 ber of acres of flue-cured tobacco that may be plant-
 17 ed by the holder of a permit during a marketing
 18 year, calculated—

19 “(A) prior to—

20 “(i) any increase or decrease in the
 21 number due to undermarketings or over-
 22 marketings; and

23 “(ii) any reduction under subsection
 24 (i); and

25 “(B) in a manner that ensures that—

1 “(i) the total of all individual acreage
2 limitations is equal to the national acreage
3 allotment, less the reserve provided under
4 subsection (h); and

5 “(ii) the individual acreage limitation
6 for a marketing year bears the same ratio
7 to the individual acreage limitation for the
8 previous marketing year as the ratio that
9 the national acreage allotment for the mar-
10 keting year bears to the national acreage
11 allotment for the previous marketing year,
12 subject to adjustments by the Secretary to
13 account for any reserve provided under
14 subsection (h).

15 “(2) INDIVIDUAL MARKETING LIMITATION.—
16 The term ‘individual marketing limitation’ means
17 the number of pounds of flue-cured tobacco that
18 may be marketed by the holder of a permit during
19 a marketing year, calculated—

20 “(A) prior to—

21 “(i) any increase or decrease in the
22 number due to undermarketings or over-
23 marketings; and

24 “(ii) any reduction under subsection
25 (i); and

1 “(B) in a manner that ensures that—

2 “(i) the total of all individual market-
3 ing limitations is equal to the national
4 marketing quota, less the reserve provided
5 under subsection (h); and

6 “(ii) the individual marketing limita-
7 tion for a marketing year is obtained by
8 multiplying the individual acreage limita-
9 tion by the permit yield, prior to any ad-
10 justment for undermarketings or over-
11 marketings.

12 “(3) INDIVIDUAL TOBACCO PRODUCTION PER-
13 MIT.—The term ‘individual tobacco production per-
14 mit’ means a permit issued by the Secretary to a
15 person authorizing the production of flue-cured to-
16 bacco for any marketing year during which this sec-
17 tion is effective.

18 “(4) NATIONAL ACREAGE ALLOTMENT.—The
19 term ‘national acreage allotment’ means the quantity
20 determined by dividing—

21 “(A) the national marketing quota; by

22 “(B) the national average yield goal.

23 “(5) NATIONAL AVERAGE YIELD GOAL.—The
24 term ‘national average yield goal’ means the national
25 average yield for flue-cured tobacco during the 5

1 marketing years immediately preceding the market-
2 ing year for which the determination is being made.

3 “(6) NATIONAL MARKETING QUOTA.—For the
4 1999 and each subsequent crop of flue-cured to-
5 bacco, the term ‘national marketing quota’ for a
6 marketing year means the quantity of flue-cured to-
7 bacco, as determined by the Secretary, that is not
8 more than 103 percent nor less than 97 percent of
9 the total of—

10 “(A) the aggregate of the quantities of
11 flue-cured tobacco that domestic manufacturers
12 of cigarettes estimate that the manufacturers
13 intend to purchase on the United States auction
14 markets or from producers during the market-
15 ing year, as compiled and determined under
16 section 320A;

17 “(B) the average annual quantity of flue-
18 cured tobacco exported from the United States
19 during the 3 marketing years immediately pre-
20 ceding the marketing year for which the deter-
21 mination is being made; and

22 “(C) the quantity, if any, of flue-cured to-
23 bacco that the Secretary, in the discretion of
24 the Secretary, determines is necessary to in-
25 crease or decrease the inventory of the pro-

1 ducer-owned cooperative marketing association
2 that has entered into a loan agreement with the
3 Commodity Credit Corporation to make price
4 support available to producers of flue-cured to-
5 bacco to establish or maintain the inventory at
6 the reserve stock level for flue-cured tobacco.

7 “(7) PERMIT YIELD.—The term ‘permit yield’
8 means the yield of tobacco per acre for an individual
9 tobacco production permit holder that is—

10 “(A) based on a preliminary permit yield
11 that is equal to the average yield during the 5
12 marketing years immediately preceding the
13 marketing year for which the determination is
14 made in the county where the holder of the per-
15 mit is authorized to plant flue-cured tobacco, as
16 determined by the Secretary, on the basis of ac-
17 tual yields of farms in the county; and

18 “(B) adjusted by a weighted national yield
19 factor calculated by—

20 “(i) multiplying each preliminary per-
21 mit yield by the individual acreage limita-
22 tion, prior to adjustments for overmarket-
23 ings, undermarketings, or reductions re-
24 quired under subsection (i); and

1 “(ii) dividing the sum of the products
2 under clause (i) for all flue-cured individ-
3 ual tobacco production permit holders by
4 the national acreage allotment.

5 “(b) INITIAL ISSUANCE OF PERMITS.—

6 “(1) TERMINATION OF FLUE-CURED MARKET-
7 ING QUOTAS.—On the date of enactment of the Na-
8 tional Tobacco Policy and Youth Smoking Reduction
9 Act, farm marketing quotas as provided under sec-
10 tion 317 shall no longer be in effect for flue-cured
11 tobacco.

12 “(2) ISSUANCE OF PERMITS TO QUOTA HOLD-
13 ERS THAT WERE PRINCIPAL PRODUCERS.—

14 “(A) IN GENERAL.—By January 15, 1999,
15 each individual quota holder under section 317
16 that was a principal producer of flue-cured to-
17 bacco during the 1998 marketing year, as de-
18 termined by the Secretary, shall be issued an
19 individual tobacco production permit under this
20 section.

21 “(B) NOTIFICATION.—The Secretary shall
22 notify the holder of each permit of the individ-
23 ual acreage limitation and the individual mar-
24 keting limitation applicable to the holder for
25 each marketing year.

1 “(C) INDIVIDUAL ACREAGE LIMITATION
2 FOR 1999 MARKETING YEAR.—In establishing
3 the individual acreage limitation for the 1999
4 marketing year under this section, the farm
5 acreage allotment that was allotted to a farm
6 owned by the quota holder for the 1997 mar-
7 keting year shall be considered the individual
8 acreage limitation for the previous marketing
9 year.

10 “(D) INDIVIDUAL MARKETING LIMITATION
11 FOR 1999 MARKETING YEAR.—In establishing
12 the individual marketing limitation for the 1999
13 marketing year under this section, the farm
14 marketing quota that was allotted to a farm
15 owned by the quota holder for the 1997 mar-
16 keting year shall be considered the individual
17 marketing limitation for the previous marketing
18 year.

19 “(3) QUOTA HOLDERS THAT WERE NOT PRIN-
20 CIPAL PRODUCERS.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B), on approval through a ref-
23 erendum under subsection (c)—

24 “(i) each person that was a quota
25 holder under section 317 but that was not

1 a principal producer of flue-cured tobacco
2 during the 1997 marketing year, as deter-
3 mined by the Secretary, shall not be eligi-
4 ble to own a permit; and

5 “(ii) the Secretary shall not issue any
6 permit during the 25-year period beginning
7 on the date of enactment of this Act to any
8 person that was a quota holder and was
9 not the principal producer of flue-cured to-
10 bacco during the 1997 marketing year.

11 “(B) MEDICAL HARDSHIPS AND CROP DIS-
12 ASTERS.—Subparagraph (A) shall not apply to
13 a person that would have been the principal
14 producer of flue-cured tobacco during the 1997
15 marketing year but for a medical hardship or
16 crop disaster that occurred during the 1997
17 marketing year.

18 “(C) ADMINISTRATION.—The Secretary
19 shall issue regulations—

20 “(i) defining the term ‘person’ for the
21 purpose of this paragraph; and

22 “(ii) prescribing such rules as the Sec-
23 retary determines are necessary to ensure
24 a fair and reasonable application of the

1 prohibition established under this para-
2 graph.

3 “(4) ISSUANCE OF PERMITS TO PRINCIPAL PRO-
4 DUCERS OF FLUE-CURED TOBACCO.—

5 “(A) IN GENERAL.—By January 15, 1999,
6 each individual quota lessee or quota tenant (as
7 defined in section 1002 of the LEAF Act) that
8 was the principal producer of flue-cured tobacco
9 during the 1997 marketing year, as determined
10 by the Secretary, shall be issued an individual
11 tobacco production permit under this section.

12 “(B) INDIVIDUAL ACREAGE LIMITA-
13 TIONS.—In establishing the individual acreage
14 limitation for the 1999 marketing year under
15 this section, the farm acreage allotment that
16 was allotted to a farm owned by a quota holder
17 for whom the quota lessee or quota tenant was
18 the principal producer of flue-cured tobacco
19 during the 1997 marketing year shall be consid-
20 ered the individual acreage limitation for the
21 previous marketing year.

22 “(C) INDIVIDUAL MARKETING LIMITA-
23 TIONS.—In establishing the individual market-
24 ing limitation for the 1999 marketing year
25 under this section, the individual marketing

1 limitation for the previous year for an individ-
2 ual described in this paragraph shall be cal-
3 culated by multiplying—

4 “(i) the farm marketing quota that
5 was allotted to a farm owned by a quota
6 holder for whom the quota lessee or quota
7 holder was the principal producer of flue-
8 cured tobacco during the 1997 marketing
9 year, by

10 “(ii) the ratio that—

11 “(I) the sum of all flue-cured to-
12 bacco farm marketing quotas for the
13 1997 marketing year prior to adjust-
14 ing for undermarketing and over-
15 marketing; bears to

16 “(II) the sum of all flue-cured to-
17 bacco farm marketing quotas for the
18 1998 marketing year, after adjusting
19 for undermarketing and overmarket-
20 ing.

21 “(D) SPECIAL RULE FOR TENANT OF
22 LEASED FLUE-CURED TOBACCO.—If the farm
23 marketing quota or farm acreage allotment of a
24 quota holder was produced pursuant to an
25 agreement under which a quota lessee rented

1 land from a quota holder and a quota tenant
2 was the primary producer, as determined by the
3 Secretary, of flue-cured tobacco pursuant to the
4 farm marketing quota or farm acreage allot-
5 ment, the farm marketing quota or farm acre-
6 age allotment shall be divided proportionately
7 between the quota lessee and quota tenant for
8 purposes of issuing individual tobacco produc-
9 tion permits under this paragraph.

10 “(5) OPTION OF QUOTA LESSEE OR QUOTA
11 TENANT TO RELINQUISH PERMIT.—

12 “(A) IN GENERAL.—Each quota lessee or
13 quota tenant that is issued an individual to-
14 bacco production permit under paragraph (4)
15 shall be given the option of relinquishing the
16 permit in exchange for payments made under
17 section 1021(e)(5) of the LEAF Act.

18 “(B) NOTIFICATION.—A quota lessee or
19 quota tenant that is issued an individual to-
20 bacco production permit shall give notification
21 of the intention to exercise the option at such
22 time and in such manner as the Secretary may
23 require, but not later than 45 days after the
24 permit is issued.

1 “(C) REALLOCATION OF PERMIT.—The
2 Secretary shall add the authority to produce
3 flue-cured tobacco under the individual tobacco
4 production permit relinquished under this para-
5 graph to the county production pool established
6 under paragraph (8) for reallocation by the ap-
7 propriate county committee.

8 “(6) ACTIVE PRODUCER REQUIREMENT.—

9 “(A) REQUIREMENT FOR SHARING RISK.—
10 No individual tobacco production permit shall
11 be issued to, or maintained by, a person that
12 does not fully share in the risk of producing a
13 crop of flue-cured tobacco.

14 “(B) CRITERIA FOR SHARING RISK.—For
15 purposes of this paragraph, a person shall be
16 considered to have fully shared in the risk of
17 production of a crop if—

18 “(i) the investment of the person in
19 the production of the crop is not less than
20 100 percent of the costs of production as-
21 sociated with the crop;

22 “(ii) the amount of the person’s re-
23 turn on the investment is dependent solely
24 on the sale price of the crop; and

1 “(iii) the person may not receive any
2 of the return before the sale of the crop.

3 “(C) PERSONS NOT SHARING RISK.—

4 “(i) FORFEITURE.—Any person that
5 fails to fully share in the risks of produc-
6 tion under this paragraph shall forfeit an
7 individual tobacco production permit if,
8 after notice and opportunity for a hearing,
9 the appropriate county committee deter-
10 mines that the conditions for forfeiture
11 exist.

12 “(ii) REALLOCATION.—The Secretary
13 shall add the authority to produce flue-
14 cured tobacco under the individual tobacco
15 production permit forfeited under this sub-
16 paragraph to the county production pool
17 established under paragraph (8) for re-
18 allocation by the appropriate county com-
19 mittee.

20 “(D) NOTICE.—Notice of any determina-
21 tion made by a county committee under sub-
22 paragraph (C) shall be mailed, as soon as prac-
23 ticable, to the person involved.

24 “(E) REVIEW.—If the person is dissatis-
25 fied with the determination, the person may re-

1 quest, not later than 15 days after notice of the
2 determination is received, a review of the deter-
3 mination by a local review committee under the
4 procedures established under section 363 for
5 farm marketing quotas.

6 “(7) COUNTY OF ORIGIN REQUIREMENT.—For
7 the 1999 and each subsequent crop of flue-cured to-
8 bacco, all tobacco produced pursuant to an individ-
9 ual tobacco production permit shall be produced in
10 the same county in which was produced the tobacco
11 produced during the 1997 marketing year pursuant
12 to the farm marketing quota or farm acreage allot-
13 ment on which the individual tobacco production
14 permit is based.

15 “(8) COUNTY PRODUCTION POOL.—

16 “(A) IN GENERAL.—The authority to
17 produce flue-cured tobacco under an individual
18 tobacco production permit that is forfeited, re-
19 linquished, or surrendered within a county may
20 be reallocated by the appropriate county com-
21 mittee to tobacco producers located in the same
22 county that apply to the committee to produce
23 flue-cured tobacco under the authority.

24 “(B) PRIORITY.—In reallocating individual
25 tobacco production permits under this para-

graph, a county committee shall provide a priority to—

“(i) an active tobacco producer that controls the authority to produce a quantity of flue-cured tobacco under an individual tobacco production permit that is equal to or less than the average number of pounds of flue-cured tobacco that was produced by the producer during each of the 1995 through 1997 marketing years, as determined by the Secretary; and

“(ii) a new tobacco producer.

“(C) CRITERIA.—Individual tobacco production permits shall be reallocated by the appropriate county committee under this paragraph in a fair and equitable manner after taking into consideration—

“(i) the experience of the producer;

“(ii) the availability of land, labor, and equipment for the production of tobacco;

“(iii) crop rotation practices; and

“(iv) the soil and other physical factors affecting the production of tobacco.

1 “(D) MEDICAL HARDSHIPS AND CROP DIS-
2 ASTERS.—Notwithstanding any other provision
3 of this Act, the Secretary may issue an individ-
4 ual tobacco production permit under this para-
5 graph to a producer that is otherwise ineligible
6 for the permit due to a medical hardship or
7 crop disaster that occurred during the 1997
8 marketing year.

9 “(c) REFERENDUM.—

10 “(1) ANNOUNCEMENT OF QUOTA AND ALLOT-
11 MENT.—Not later than December 15, 1998, the Sec-
12 retary pursuant to subsection (b) shall determine
13 and announce—

14 “(A) the quantity of the national market-
15 ing quota for flue-cured tobacco for the 1999
16 marketing year; and

17 “(B) the national acreage allotment and
18 national average yield goal for the 1999 crop of
19 flue-cured tobacco.

20 “(2) SPECIAL REFERENDUM.—Not later than
21 30 days after the announcement of the quantity of
22 the national marketing quota in 2001, the Secretary
23 shall conduct a special referendum of the tobacco
24 production permit holders that were the principal
25 producers of flue-cured tobacco of the 1997 crop to

1 determine whether the producers approve or oppose
2 the continuation of individual tobacco production
3 permits on an acreage-poundage basis as provided in
4 this section for the 2002 through 2004 marketing
5 years.

6 “(3) APPROVAL OF PERMITS.—If the Secretary
7 determines that more than $66\frac{2}{3}$ percent of the pro-
8 ducers voting in the special referendum approve the
9 establishment of individual tobacco production per-
10 mits on an acreage-poundage basis—

11 “(A) individual tobacco production permits
12 on an acreage-poundage basis as provided in
13 this section shall be in effect for the 2002
14 through 2004 marketing years; and

15 “(B) marketing quotas on an acreage-
16 poundage basis shall cease to be in effect for
17 the 2002 through 2004 marketing years.

18 “(4) DISAPPROVAL OF PERMITS.—If individual
19 tobacco production permits on an acreage-poundage
20 basis are not approved by more than $66\frac{2}{3}$ percent
21 of the producers voting in the referendum, no mar-
22 keting quotas on an acreage-poundage basis shall
23 continue in effect that were proclaimed under sec-
24 tion 317 prior to the referendum.

1 “(5) APPLICABLE MARKETING YEARS.—If indi-
2 vidual tobacco production permits have been made
3 effective for flue-cured tobacco on an acreage-pound-
4 age basis pursuant to this subsection, the Secretary
5 shall, not later than December 15 of any future
6 marketing year, announce a national marketing
7 quota for that type of tobacco for the next 3 suc-
8 ceeding marketing years if the marketing year is the
9 last year of 3 consecutive years for which individual
10 tobacco production permits previously proclaimed
11 will be in effect.

12 “(d) ANNUAL ANNOUNCEMENT OF NATIONAL MAR-
13 KETING QUOTA.—The Secretary shall determine and an-
14 nounce the national marketing quota, national acreage al-
15 lotment, and national average yield goal for the second
16 and third marketing years of any 3-year period for which
17 individual tobacco production permits are in effect on or
18 before the December 15 immediately preceding the begin-
19 ning of the marketing year to which the quota, allotment,
20 and goal apply.

21 “(e) ANNUAL ANNOUNCEMENT OF INDIVIDUAL TO-
22 BACCO PRODUCTION PERMITS.—If a national marketing
23 quota, national acreage allotment, and national average
24 yield goal are determined and announced, the Secretary
25 shall provide for the determination of individual tobacco

1 production permits, individual acreage limitations, and in-
2 dividual marketing limitations under this section for the
3 crop and marketing year covered by the determinations.

4 “(f) ASSIGNMENT OF TOBACCO PRODUCTION PER-
5 MITS.—

6 “(1) LIMITATION TO SAME COUNTY.—Each in-
7 dividual tobacco production permit holder shall as-
8 sign the individual acreage limitation and individual
9 marketing limitation to 1 or more farms located
10 within the county of origin of the individual tobacco
11 production permit.

12 “(2) FILING WITH COUNTY COMMITTEE.—The
13 assignment of an individual acreage limitation and
14 individual marketing limitation shall not be effective
15 until evidence of the assignment, in such form as re-
16 quired by the Secretary, is filed with and determined
17 by the county committee for the county in which the
18 farm involved is located.

19 “(3) LIMITATION ON TILLABLE CROPLAND.—
20 The total acreage assigned to any farm under this
21 subsection shall not exceed the acreage of cropland
22 on the farm.

23 “(g) PROHIBITION ON SALE OR LEASING OF INDIV-
24 IDUAL TOBACCO PRODUCTION PERMITS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graphs (2) and (3), the Secretary shall not permit
3 the sale and transfer, or lease and transfer, of an in-
4 dividual tobacco production permit issued under this
5 section.

6 “(2) TRANSFER TO DESCENDANTS.—

7 “(A) DEATH.—In the case of the death of
8 a person to whom an individual tobacco produc-
9 tion permit has been issued under this section,
10 the permit shall transfer to the surviving spouse
11 of the person or, if there is no surviving spouse,
12 to surviving direct descendants of the person.

13 “(B) TEMPORARY INABILITY TO FARM.—

14 In the case of the death of a person to whom
15 an individual tobacco production permit has
16 been issued under this section and whose de-
17 scendants are temporarily unable to produce a
18 crop of tobacco, the Secretary may hold the li-
19 cense in the name of the descendants for a pe-
20 riod of not more than 18 months.

21 “(3) VOLUNTARY TRANSFERS.—A person that
22 is eligible to obtain an individual tobacco production
23 permit under this section may at any time transfer
24 all or part of the permit to the person’s spouse or

1 direct descendants that are actively engaged in the
2 production of tobacco.

3 “(h) RESERVE.—

4 “(1) IN GENERAL.—For each marketing year
5 for which individual tobacco production permits are
6 in effect under this section, the Secretary may estab-
7 lish a reserve from the national marketing quota in
8 a quantity equal to not more than 1 percent of the
9 national marketing quota to be available for—

10 “(A) making corrections of errors in indi-
11 vidual acreage limitations and individual mar-
12 keting limitations;

13 “(B) adjusting inequities; and

14 “(C) establishing individual tobacco pro-
15 duction permits for new tobacco producers (ex-
16 cept that not less than two-thirds of the reserve
17 shall be for establishing such permits for new
18 tobacco producers).

19 “(2) ELIGIBLE PERSONS.—To be eligible for a
20 new individual tobacco production permit, a pro-
21 ducer must not have been the principal producer of
22 tobacco during the immediately preceding 5 years.

23 “(3) APPORTIONMENT FOR NEW PRODUCERS.—

24 The part of the reserve held for apportionment to

1 new individual tobacco producers shall be allotted on
2 the basis of—

3 “(A) land, labor, and equipment available
4 for the production of tobacco;

5 “(B) crop rotation practices;

6 “(C) soil and other physical factors affect-
7 ing the production of tobacco; and

8 “(D) the past tobacco-producing experience
9 of the producer.

10 “(4) PERMIT YIELD.—The permit yield for any
11 producer for which a new individual tobacco produc-
12 tion permit is established shall be determined on the
13 basis of available productivity data for the land in-
14 volved and yields for similar farms in the same coun-
15 ty.

16 “(i) PENALTIES.—

17 “(1) PRODUCTION ON OTHER FARMS.—If any
18 quantity of tobacco is marketed as having been pro-
19 duced under an individual acreage limitation or indi-
20 vidual marketing limitation assigned to a farm but
21 was produced on a different farm, the individual
22 acreage limitation or individual marketing limitation
23 for the following marketing year shall be forfeited.

24 “(2) FALSE REPORT.—If a person to which an
25 individual tobacco production permit is issued files,

1 or aids or acquiesces in the filing of, a false report
2 with respect to the assignment of an individual acre-
3 age limitation or individual marketing limitation for
4 a quantity of tobacco, the individual acreage limita-
5 tion or individual marketing limitation for the fol-
6 lowing marketing year shall be forfeited.

7 “(j) MARKETING PENALTIES.—

8 “(1) IN GENERAL.—When individual tobacco
9 production permits under this section are in effect,
10 provisions with respect to penalties for the market-
11 ing of excess tobacco and the other provisions con-
12 tained in section 314 shall apply in the same man-
13 ner and to the same extent as they would apply
14 under section 317(g) if farm marketing quotas were
15 in effect.

16 “(2) PRODUCTION ON OTHER FARMS.—If a
17 producer falsely identifies tobacco as having been
18 produced on or marketed from a farm to which an
19 individual acreage limitation or individual marketing
20 limitation has been assigned, future individual acre-
21 age limitations and individual marketing limitations
22 shall be forfeited.”.

1 **SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PRO-**
2 **GRAMS.**

3 (a) PROGRAM REFERENDA.—Section 312(c) of the
4 Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c))
5 is amended—

6 (1) by striking “(c) Within thirty” and insert-
7 ing the following:

8 “(c) REFERENDA ON QUOTAS.—

9 “(1) IN GENERAL.—Not later than 30”; and

10 (2) by adding at the end the following:

11 “(2) REFERENDA ON PROGRAM CHANGES.—

12 “(A) IN GENERAL.—In the case of any
13 type of tobacco for which marketing quotas are
14 in effect, on the receipt of a petition from more
15 than 5 percent of the producers of that type of
16 tobacco in a State, the Secretary shall conduct
17 a statewide referendum on any proposal related
18 to the lease and transfer of tobacco quota with-
19 in a State requested by the petition that is au-
20 thorized under this part.

21 “(B) APPROVAL OF PROPOSALS.—If a ma-
22 jority of producers of the type of tobacco in the
23 State approve a proposal in a referendum con-
24 ducted under subparagraph (A), the Secretary
25 shall implement the proposal in a manner that

1 applies to all producers and quota holders of
2 that type of tobacco in the State.”.

3 (b) PURCHASE REQUIREMENTS.—Section 320B of
4 the Agricultural Adjustment Act of 1938 (7 U.S.C.
5 1314h) is amended—

6 (1) in subsection (c)—

7 (A) by striking “(c) The amount” and in-
8 serting “(c) AMOUNT OF PENALTY.—For the
9 1998 and subsequent marketing years, the
10 amount”; and

11 (B) by striking paragraph (1) and insert-
12 ing the following:

13 “(1) 105 percent of the average market price
14 for the type of tobacco involved during the preceding
15 marketing year; and”.

16 (c) ELIMINATION OF TOBACCO MARKETING ASSESS-
17 MENT.—

18 (1) IN GENERAL.—Section 106 of the Agricul-
19 tural Act of 1949 (7 U.S.C. 1445) is amended by
20 striking subsection (g).

21 (2) CONFORMING AMENDMENT.—Section
22 422(c) of the Uruguay Round Agreements Act (Pub-
23 lic Law 103–465; 7 U.S.C. 1445 note) is amended
24 by striking “section 106(g), 106A, or 106B of the
25 Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–

1 1, or 1445-2)” and inserting “section 106A or
 2 106B of the Agricultural Act of 1949 (7 U.S.C.
 3 1445-1, 1445-2)”.

4 (d) ADJUSTMENT FOR LAND RENTAL COSTS.—Sec-
 5 tion 106 of the Agricultural Act of 1949 (7 U.S.C. 1445)
 6 is amended by adding at the end the following:

7 “(h) ADJUSTMENT FOR LAND RENTAL COSTS.—For
 8 each of the 1999 and 2000 marketing years for flue-cured
 9 tobacco, after consultation with producers, State farm or-
 10 ganizations and cooperative associations, the Secretary
 11 shall make an adjustment in the price support level for
 12 flue-cured tobacco equal to the annual change in the aver-
 13 age cost per pound to flue-cured producers, as determined
 14 by the Secretary, under agreements through which pro-
 15 ducers rent land to produce flue-cured tobacco.”.

16 (e) FIRE-CURED AND DARK AIR-CURED TOBACCO
 17 PROGRAMS.—

18 (1) LIMITATION ON TRANSFERS.—Section
 19 318(g) of the Agricultural Adjustment Act of 1938
 20 (7 U.S.C. 1314d(g)) is amended—

21 (A) by striking “ten” and inserting “30”;

22 and

23 (B) by inserting “during any crop year”
 24 after “transferred to any farm”.

1 (2) LOSS OF ALLOTMENT OR QUOTA THROUGH
 2 UNDERPLANTING.—Section 318 of the Agricultural
 3 Adjustment Act of 1938 (7 U.S.C. 1314d) is amend-
 4 ed by adding at the end the following:

5 “(k) LOSS OF ALLOTMENT OR QUOTA THROUGH
 6 UNDERPLANTING.—Effective for the 1999 and subse-
 7 quent marketing years, no acreage allotment or acreage-
 8 poundage quota, other than a new marketing quota, shall
 9 be established for a farm on which no fire-cured or dark
 10 air-cured tobacco was planted or considered planted dur-
 11 ing at least 2 of the 3 crop years immediately preceding
 12 the crop year for which the acreage allotment or acreage-
 13 poundage quota would otherwise be established.”.

14 (f) EXPANSION OF TYPES OF TOBACCO SUBJECT TO
 15 NO NET COST ASSESSMENT.—

16 (1) NO NET COST TOBACCO FUND.—Section
 17 106A(d)(1)(A) of the Agricultural Act of 1949 (7
 18 U.S.C. 1445–1(d)(1)(A)) is amended—

19 (A) in clause (ii), by inserting after “Bur-
 20 ley quota tobacco” the following: “and fire-
 21 cured and dark air-cured quota tobacco”; and

22 (B) in clause (iii)—

23 (i) in the matter preceding subclause
 24 (I), by striking “Flue-cured or Burley to-
 25 bacco” and inserting “each kind of tobacco

for which price support is made available under this Act, and each kind of like tobacco,”; and

(ii) by striking subclause (II) and inserting the following:

“(II) the sum of the amount of the per pound producer contribution and purchaser assessment (if any) for the kind of tobacco payable under clauses (i) and (ii); and”.

(2) NO NET COST TOBACCO ACCOUNT.—Section 106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C. 1445–2(d)(1)) is amended—

(A) in subparagraph (B), by inserting after “Burley quota tobacco” the following: “and fire-cured and dark air-cured tobacco”; and

(B) in subparagraph (C), by striking “Flue-cured and Burley tobacco” and inserting “each kind of tobacco for which price support is made available under this Act, and each kind of like tobacco,”.

Subtitle C—Farmer and Worker Transition Assistance

SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.

(a) GROUP ELIGIBILITY REQUIREMENTS.—

1 (1) CRITERIA.—A group of workers (including
2 workers in any firm or subdivision of a firm involved
3 in the manufacture, processing, or warehousing of
4 tobacco or tobacco products) shall be certified as eli-
5 gible to apply for adjustment assistance under this
6 section pursuant to a petition filed under subsection
7 (b) if the Secretary of Labor determines that a sig-
8 nificant number or proportion of the workers in the
9 workers’ firm or an appropriate subdivision of the
10 firm have become totally or partially separated, or
11 are threatened to become totally or partially sepa-
12 rated, and—

13 (A) the sales or production, or both, of the
14 firm or subdivision have decreased absolutely;
15 and

16 (B) the implementation of the national to-
17 bacco settlement contributed importantly to the
18 workers’ separation or threat of separation and
19 to the decline in the sales or production of the
20 firm or subdivision.

21 (2) DEFINITION OF CONTRIBUTED IMPOR-
22 TANTLY.—In paragraph (1)(B), the term “contrib-
23 uted importantly” means a cause that is important
24 but not necessarily more important than any other
25 cause.

1 (3) REGULATIONS.—The Secretary shall issue
2 regulations relating to the application of the criteria
3 described in paragraph (1) in making preliminary
4 findings under subsection (b) and determinations
5 under subsection (c).

6 (b) PRELIMINARY FINDINGS AND BASIC ASSIST-
7 ANCE.—

8 (1) FILING OF PETITIONS.—A petition for cer-
9 tification of eligibility to apply for adjustment assist-
10 ance under this section may be filed by a group of
11 workers (including workers in any firm or subdivi-
12 sion of a firm involved in the manufacture, process-
13 ing, or warehousing of tobacco or tobacco products)
14 or by their certified or recognized union or other
15 duly authorized representative with the Governor of
16 the State in which the workers' firm or subdivision
17 thereof is located.

18 (2) FINDINGS AND ASSISTANCE.—On receipt of
19 a petition under paragraph (1), the Governor shall—

20 (A) notify the Secretary that the Governor
21 has received the petition;

22 (B) within 10 days after receiving the peti-
23 tion—

1 (i) make a preliminary finding as to
2 whether the petition meets the criteria de-
3 scribed in subsection (a)(1); and

4 (ii) transmit the petition, together
5 with a statement of the finding under
6 clause (i) and reasons for the finding, to
7 the Secretary for action under subsection
8 (c); and

9 (C) if the preliminary finding under sub-
10 paragraph (B)(i) is affirmative, ensure that
11 rapid response and basic readjustment services
12 authorized under other Federal laws are made
13 available to the workers.

14 (c) REVIEW OF PETITIONS BY SECRETARY; CERTIFI-
15 CATIONS.—

16 (1) IN GENERAL.—The Secretary, within 30
17 days after receiving a petition under subsection
18 (b)(2)(B)(ii), shall determine whether the petition
19 meets the criteria described in subsection (a)(1). On
20 a determination that the petition meets the criteria,
21 the Secretary shall issue to workers covered by the
22 petition a certification of eligibility to apply for the
23 assistance described in subsection (d).

24 (2) DENIAL OF CERTIFICATION.—On the denial
25 of a certification with respect to a petition under

1 paragraph (1), the Secretary shall review the peti-
2 tion in accordance with the requirements of other
3 applicable assistance programs to determine if the
4 workers may be certified under the other programs.

5 (d) COMPREHENSIVE ASSISTANCE.—

6 (1) IN GENERAL.—Workers covered by a certifi-
7 cation issued by the Secretary under subsection
8 (c)(1) shall be provided with benefits and services
9 described in paragraph (2) in the same manner and
10 to the same extent as workers covered under a cer-
11 tification under subchapter A of title II of the Trade
12 Act of 1974 (19 U.S.C. 2271 et seq.), except that
13 the total amount of payments under this section for
14 any fiscal year shall not exceed \$25,000,000.

15 (2) BENEFITS AND SERVICES.—The benefits
16 and services described in this paragraph are the fol-
17 lowing:

18 (A) Employment services of the type de-
19 scribed in section 235 of the Trade Act of 1974
20 (19 U.S.C. 2295).

21 (B) Training described in section 236 of
22 the Trade Act of 1974 (19 U.S.C. 2296), ex-
23 cept that notwithstanding the provisions of sec-
24 tion 236(a)(2)(A) of that Act, the total amount

1 of payments for training under this section for
2 any fiscal year shall not exceed \$12,500,000.

3 (C) Tobacco worker readjustment allow-
4 ances, which shall be provided in the same man-
5 ner as trade readjustment allowances are pro-
6 vided under part I of subchapter B of chapter
7 2 of title II of the Trade Act of 1974 (19
8 U.S.C. 2291 et seq.), except that—

9 (i) the provisions of sections
10 231(a)(5)(C) and 231(c) of that Act (19
11 U.S.C. 2291(a)(5)(C), 2291(c)), authoriz-
12 ing the payment of trade readjustment al-
13 lowances on a finding that it is not feasible
14 or appropriate to approve a training pro-
15 gram for a worker, shall not be applicable
16 to payment of allowances under this sec-
17 tion; and

18 (ii) notwithstanding the provisions of
19 section 233(b) of that Act (19 U.S.C.
20 2293(b)), in order for a worker to qualify
21 for tobacco readjustment allowances under
22 this section, the worker shall be enrolled in
23 a training program approved by the Sec-
24 retary of the type described in section

1 236(a) of that Act (19 U.S.C. 2296(a)) by
2 the later of—

3 (I) the last day of the 16th week
4 of the worker's initial unemployment
5 compensation benefit period; or

6 (II) the last day of the 6th week
7 after the week in which the Secretary
8 issues a certification covering the
9 worker.

10 In cases of extenuating circumstances re-
11 lating to enrollment of a worker in a train-
12 ing program under this section, the Sec-
13 retary may extend the time for enrollment
14 for a period of not to exceed 30 days.

15 (D) Job search allowances of the type de-
16 scribed in section 237 of the Trade Act of 1974
17 (19 U.S.C. 2297).

18 (E) Relocation allowances of the type de-
19 scribed in section 238 of the Trade Act of 1974
20 (19 U.S.C. 2298).

21 (e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAY-
22 MENTS FOR LOST TOBACCO QUOTA.—No benefits or serv-
23 ices may be provided under this section to any individual
24 who has received payments for lost tobacco quota under
25 section 1021.

1 (f) FUNDING.—Of the amounts appropriated to carry
 2 out this title, the Secretary may use not to exceed
 3 \$25,000,000 for each of fiscal years 1999 through 2008
 4 to provide assistance under this section.

5 (g) EFFECTIVE DATE.—This section shall take effect
 6 on the date that is the later of—

7 (1) October 1, 1998; or

8 (2) the date of enactment of this Act.

9 (h) TERMINATION DATE.—No assistance, vouchers,
 10 allowances, or other payments may be provided under this
 11 section after the date that is the earlier of—

12 (1) the date that is 10 years after the effective
 13 date of this section under subsection (g); or

14 (2) the date on which legislation establishing a
 15 program providing dislocated workers with com-
 16 prehensive assistance substantially similar to the as-
 17 sistance provided by this section becomes effective.

18 **SEC. 1032. FARMER OPPORTUNITY GRANTS.**

19 Part A of title IV of the Higher Education Act of
 20 1965 (20 U.S.C. 1070 et seq.) is amended by adding at
 21 the end the following:

22 **“Subpart 9—Farmer Opportunity Grants**

23 **“SEC. 420D. STATEMENT OF PURPOSE.**

24 “It is the purpose of this subpart to assist in making
 25 available the benefits of postsecondary education to eligi-

1 ble students (determined in accordance with section 420F)
2 in institutions of higher education by providing farmer op-
3 portunity grants to all eligible students.

4 **“SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETER-**
5 **MINATIONS; APPLICATIONS.**

6 “(a) PROGRAM AUTHORITY AND METHOD OF DIS-
7 TRIBUTION.—

8 “(1) PROGRAM AUTHORITY.—From amounts
9 made available under section 1011(d)(5) of the
10 LEAF Act, the Secretary, during the period begin-
11 ning July 1, 1999, and ending September 30, 2024,
12 shall pay to each eligible institution such sums as
13 may be necessary to pay to each eligible student (de-
14 termined in accordance with section 420F) for each
15 academic year during which that student is in at-
16 tendance at an institution of higher education, as an
17 undergraduate, a farmer opportunity grant in the
18 amount for which that student is eligible, as deter-
19 mined pursuant to subsection (b). Not less than 85
20 percent of the sums shall be advanced to eligible in-
21 stitutions prior to the start of each payment period
22 and shall be based on an amount requested by the
23 institution as needed to pay eligible students, except
24 that this sentence shall not be construed to limit the

1 authority of the Secretary to place an institution on
2 a reimbursement system of payment.

3 “(2) CONSTRUCTION.—Nothing in this section
4 shall be construed to prohibit the Secretary from
5 paying directly to students, in advance of the begin-
6 ning of the academic term, an amount for which the
7 students are eligible, in cases where the eligible in-
8 stitution elects not to participate in the disburse-
9 ment system required by paragraph (1).

10 “(3) DESIGNATION.—Grants made under this
11 subpart shall be known as ‘farmer opportunity
12 grants’.

13 “(b) AMOUNT OF GRANTS.—

14 “(1) AMOUNTS.—

15 “(A) IN GENERAL.—The amount of the
16 grant for a student eligible under this subpart
17 shall be—

18 “(i) \$1,700 for each of the academic
19 years 1999–2000 through 2003–2004;

20 “(ii) \$2,000 for each of the academic
21 years 2004–2005 through 2008–2009;

22 “(iii) \$2,300 for each of the academic
23 years 2009–2010 through 2013–2014;

24 “(iv) \$2,600 for each of the academic
25 years 2014–2015 through 2018–2019; and

1 “(v) \$2,900 for each of the academic
2 years 2019–2020 through 2023–2024.

3 “(B) PART-TIME RULE.—In any case
4 where a student attends an institution of higher
5 education on less than a full-time basis (includ-
6 ing a student who attends an institution of
7 higher education on less than a half-time basis)
8 during any academic year, the amount of the
9 grant for which that student is eligible shall be
10 reduced in proportion to the degree to which
11 that student is not so attending on a full-time
12 basis, in accordance with a schedule of reduc-
13 tions established by the Secretary for the pur-
14 poses of this subparagraph, computed in ac-
15 cordance with this subpart. The schedule of re-
16 ductions shall be established by regulation and
17 published in the Federal Register.

18 “(2) MAXIMUM.—No grant under this subpart
19 shall exceed the cost of attendance (as described in
20 section 472) at the institution at which that student
21 is in attendance. If, with respect to any student, it
22 is determined that the amount of a grant exceeds
23 the cost of attendance for that year, the amount of
24 the grant shall be reduced to an amount equal to the
25 cost of attendance at the institution.

1 “(3) PROHIBITION.—No grant shall be awarded
2 under this subpart to any individual who is incarcerated
3 in any Federal, State, or local penal institution.

4 “(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

5 “(1) IN GENERAL.—The period during which a
6 student may receive grants shall be the period re-
7 quired for the completion of the first undergraduate
8 baccalaureate course of study being pursued by that
9 student at the institution at which the student is in
10 attendance, except that any period during which the
11 student is enrolled in a noncredit or remedial course
12 of study as described in paragraph (2) shall not be
13 counted for the purpose of this paragraph.

14 “(2) CONSTRUCTION.—Nothing in this section
15 shall be construed to—

16 “(A) exclude from eligibility courses of
17 study that are noncredit or remedial in nature
18 and that are determined by the institution to be
19 necessary to help the student be prepared for
20 the pursuit of a first undergraduate baccalaureate
21 degree or certificate or, in the case of
22 courses in English language instruction, to be
23 necessary to enable the student to utilize already
24 existing knowledge, training, or skills;
25 and

1 “(B) exclude from eligibility programs of
2 study abroad that are approved for credit by
3 the home institution at which the student is en-
4 rolled.

5 “(3) PROHIBITION.—No student is entitled to
6 receive farmer opportunity grant payments concu-
7 rently from more than 1 institution or from the Sec-
8 retary and an institution.

9 “(d) APPLICATIONS FOR GRANTS.—

10 “(1) IN GENERAL.—The Secretary shall from
11 time to time set dates by which students shall file
12 applications for grants under this subpart. The filing
13 of applications under this subpart shall be coordi-
14 nated with the filing of applications under section
15 401(c).

16 “(2) INFORMATION AND ASSURANCES.—Each
17 student desiring a grant for any year shall file with
18 the Secretary an application for the grant containing
19 such information and assurances as the Secretary
20 may deem necessary to enable the Secretary to carry
21 out the Secretary’s functions and responsibilities
22 under this subpart.

23 “(e) DISTRIBUTION OF GRANTS TO STUDENTS.—
24 Payments under this section shall be made in accordance
25 with regulations promulgated by the Secretary for such

1 purpose, in such manner as will best accomplish the pur-
2 pose of this section. Any disbursement allowed to be made
3 by crediting the student's account shall be limited to tui-
4 tion and fees and, in the case of institutionally owned
5 housing, room and board. The student may elect to have
6 the institution provide other such goods and services by
7 crediting the student's account.

8 “(f) INSUFFICIENT FUNDING.—If, for any fiscal
9 year, the funds made available to carry out this subpart
10 are insufficient to satisfy fully all grants for students de-
11 termined to be eligible under section 420F, the amount
12 of the grant provided under subsection (b) shall be re-
13 duced on a pro rata basis among all eligible students.

14 “(g) TREATMENT OF INSTITUTIONS AND STUDENTS
15 UNDER OTHER LAWS.—Any institution of higher edu-
16 cation that enters into an agreement with the Secretary
17 to disburse to students attending that institution the
18 amounts those students are eligible to receive under this
19 subpart shall not be deemed, by virtue of the agreement,
20 to be a contractor maintaining a system of records to ac-
21 complish a function of the Secretary. Recipients of farmer
22 opportunity grants shall not be considered to be individual
23 grantees for purposes of the Drug-Free Workplace Act of
24 1988 (41 U.S.C. 701 et seq.).

1 **“SEC. 420F. STUDENT ELIGIBILITY.**

2 “(a) IN GENERAL.—In order to receive any grant
3 under this subpart, a student shall—

4 “(1) be a member of a tobacco farm family in
5 accordance with subsection (b);

6 “(2) be enrolled or accepted for enrollment in
7 a degree, certificate, or other program (including a
8 program of study abroad approved for credit by the
9 eligible institution at which the student is enrolled)
10 leading to a recognized educational credential at an
11 institution of higher education that is an eligible in-
12 stitution in accordance with section 487, and not be
13 enrolled in an elementary or secondary school;

14 “(3) if the student is presently enrolled at an
15 institution of higher education, be maintaining satis-
16 factory progress in the course of study the student
17 is pursuing in accordance with subsection (c);

18 “(4) not owe a refund on grants previously re-
19 ceived at any institution of higher education under
20 this title, or be in default on any loan from a stu-
21 dent loan fund at any institution provided for in
22 part D, or a loan made, insured, or guaranteed by
23 the Secretary under this title for attendance at any
24 institution;

25 “(5) file with the institution of higher education
26 that the student intends to attend, or is attending,

1 a document, that need not be notarized, but that
2 shall include—

3 “(A) a statement of educational purpose
4 stating that the money attributable to the grant
5 will be used solely for expenses related to at-
6 tendance or continued attendance at the institu-
7 tion; and

8 “(B) the student’s social security number;
9 and

10 “(6) be a citizen of the United States.

11 “(b) TOBACCO FARM FAMILIES.—

12 “(1) IN GENERAL.—For the purpose of sub-
13 section (a)(1), a student is a member of a tobacco
14 farm family if during calendar year 1998 the stu-
15 dent was—

16 “(A) an individual who—

17 “(i) is a participating tobacco pro-
18 ducer (as defined in section 1002 of the
19 LEAF Act); or

20 “(ii) is otherwise actively engaged in
21 the production of tobacco;

22 “(B) a spouse, son, daughter, stepson, or
23 stepdaughter of an individual described in sub-
24 paragraph (A);

25 “(C) an individual—

1 “(i) who was a brother, sister, step-
2 brother, stepsister, son-in-law, or daughter-
3 in-law of an individual described in sub-
4 paragraph (A); and

5 “(ii) whose principal place of resi-
6 dence was the home of the individual de-
7 scribed in subparagraph (A); or

8 “(D) an individual who was a dependent
9 (within the meaning of section 152 of the Inter-
10 nal Revenue Code of 1986) of an individual de-
11 scribed in subparagraph (A).

12 “(2) ADMINISTRATION.—On request, the Sec-
13 retary of Agriculture shall provide to the Secretary
14 such information as is necessary to carry out this
15 subsection.

16 “(c) SATISFACTORY PROGRESS.—

17 “(1) IN GENERAL.—For the purpose of sub-
18 section (a)(3), a student is maintaining satisfactory
19 progress if—

20 “(A) the institution at which the student is
21 in attendance reviews the progress of the stu-
22 dent at the end of each academic year, or its
23 equivalent, as determined by the institution;
24 and

1 “(B) the student has at least a cumulative
2 C average or its equivalent, or academic stand-
3 ing consistent with the requirements for grad-
4 uation, as determined by the institution, at the
5 end of the second such academic year.

6 “(2) SPECIAL RULE.—Whenever a student fails
7 to meet the eligibility requirements of subsection
8 (a)(3) as a result of the application of this sub-
9 section and subsequent to that failure the student
10 has academic standing consistent with the require-
11 ments for graduation, as determined by the institu-
12 tion, for any grading period, the student may, sub-
13 ject to this subsection, again be eligible under sub-
14 section (a)(3) for a grant under this subpart.

15 “(3) WAIVER.—Any institution of higher edu-
16 cation at which the student is in attendance may
17 waive paragraph (1) or (2) for undue hardship based
18 on—

19 “(A) the death of a relative of the student;

20 “(B) the personal injury or illness of the
21 student; or

22 “(C) special circumstances as determined
23 by the institution.

24 “(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL
25 GRADUATES.—In order for a student who does not have

1 a certificate of graduation from a school providing second-
2 ary education, or the recognized equivalent of the certifi-
3 cate, to be eligible for any assistance under this subpart,
4 the student shall meet either 1 of the following standards:

5 “(1) EXAMINATION.—The student shall take an
6 independently administered examination and shall
7 achieve a score, specified by the Secretary, dem-
8 onstrating that the student can benefit from the
9 education or training being offered. The examination
10 shall be approved by the Secretary on the basis of
11 compliance with such standards for development, ad-
12 ministration, and scoring as the Secretary may pre-
13 scribe in regulations.

14 “(2) DETERMINATION.—The student shall be
15 determined as having the ability to benefit from the
16 education or training in accordance with such proc-
17 ess as the State shall prescribe. Any such process
18 described or approved by a State for the purposes of
19 this section shall be effective 6 months after the date
20 of submission to the Secretary unless the Secretary
21 disapproves the process. In determining whether to
22 approve or disapprove the process, the Secretary
23 shall take into account the effectiveness of the proc-
24 ess in enabling students without secondary school di-
25 plomas or the recognized equivalent to benefit from

1 the instruction offered by institutions utilizing the
2 process, and shall also take into account the cultural
3 diversity, economic circumstances, and educational
4 preparation of the populations served by the institu-
5 tions.

6 “(e) SPECIAL RULE FOR CORRESPONDENCE
7 COURSES.—A student shall not be eligible to receive a
8 grant under this subpart for a correspondence course un-
9 less the course is part of a program leading to an associ-
10 ate, bachelor, or graduate degree.

11 “(f) COURSES OFFERED THROUGH TELECOMMUNI-
12 CATIONS.—

13 “(1) RELATION TO CORRESPONDENCE
14 COURSES.—A student enrolled in a course of in-
15 struction at an eligible institution of higher edu-
16 cation (other than an institute or school that meets
17 the definition in section 521(4)(C) of the Carl D.
18 Perkins Vocational and Applied Technology Edu-
19 cation Act (20 U.S.C. 2471(4)(C))) that is offered
20 in whole or in part through telecommunications and
21 leads to a recognized associate, bachelor, or graduate
22 degree conferred by the institution shall not be con-
23 sidered to be enrolled in correspondence courses un-
24 less the total amount of telecommunications and cor-

1 response courses at the institution equals or ex-
2 ceeds 50 percent of the courses.

3 “(2) RESTRICTION OR REDUCTIONS OF FINAN-
4 CIAL AID.—A student’s eligibility to receive a grant
5 under this subpart may be reduced if a financial aid
6 officer determines under the discretionary authority
7 provided in section 479A that telecommunications
8 instruction results in a substantially reduced cost of
9 attendance to the student.

10 “(3) DEFINITION.—For the purposes of this
11 subsection, the term ‘telecommunications’ means the
12 use of television, audio, or computer transmission,
13 including open broadcast, closed circuit, cable,
14 microwave, or satellite, audio conferencing, computer
15 conferencing, or video cassettes or discs, except that
16 the term does not include a course that is delivered
17 using video cassette or disc recordings at the institu-
18 tion and that is not delivered in person to other stu-
19 dents of that institution.

20 “(g) STUDY ABROAD.—Nothing in this subpart shall
21 be construed to limit or otherwise prohibit access to study
22 abroad programs approved by the home institution at
23 which a student is enrolled. An otherwise eligible student
24 who is engaged in a program of study abroad approved
25 for academic credit by the home institution at which the

1 student is enrolled shall be eligible to receive a grant under
2 this subpart, without regard to whether the study abroad
3 program is required as part of the student's degree pro-
4 gram.

5 “(h) VERIFICATION OF SOCIAL SECURITY NUM-
6 BER.—The Secretary, in cooperation with the Commis-
7 sioner of Social Security, shall verify any social security
8 number provided by a student to an eligible institution
9 under subsection (a)(5)(B) and shall enforce the following
10 conditions:

11 “(1) PENDING VERIFICATION.—Except as pro-
12 vided in paragraphs (2) and (3), an institution shall
13 not deny, reduce, delay, or terminate a student's eli-
14 gibility for assistance under this subpart because so-
15 cial security number verification is pending.

16 “(2) DENIAL OR TERMINATION.—If there is a
17 determination by the Secretary that the social secu-
18 rity number provided to an eligible institution by a
19 student is incorrect, the institution shall deny or ter-
20 minate the student's eligibility for any grant under
21 this subpart until such time as the student provides
22 documented evidence of a social security number
23 that is determined by the institution to be correct.

24 “(3) CONSTRUCTION.—Nothing in this sub-
25 section shall be construed to permit the Secretary to

1 take any compliance, disallowance, penalty, or other
2 regulatory action against—

3 “(A) any institution of higher education
4 with respect to any error in a social security
5 number, unless the error was a result of fraud
6 on the part of the institution; or

7 “(B) any student with respect to any error
8 in a social security number, unless the error
9 was a result of fraud on the part of the stu-
10 dent.”.

11 **Subtitle D—Immunity**

12 **SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS** 13 **AND TOBACCO WAREHOUSE OWNERS.**

14 Notwithstanding any other provision of this title, a
15 participating tobacco producer, tobacco-related growers
16 association, or tobacco warehouse owner or employee may
17 not be subject to liability in any Federal or State court
18 for any cause of action resulting from the failure of any
19 tobacco product manufacturer, distributor, or retailer to
20 comply with the National Tobacco Policy and Youth
21 Smoking Reduction Act.

TITLE XI—MISCELLANEOUS
PROVISIONS
Subtitle A—International
Provisions

SEC. 1101. POLICY.

It shall be the policy of the United States government to pursue bilateral and multilateral agreements that include measures designed to—

- (1) restrict or eliminate tobacco advertising and promotion aimed at children;
- (2) require effective warning labels on packages and advertisements of tobacco products;
- (3) require disclosure of tobacco ingredient information to the public;
- (4) limit access to tobacco products by young people;
- (5) reduce smuggling of tobacco and tobacco products;
- (6) ensure public protection from environmental tobacco smoke; and
- (7) promote tobacco product policy and program information sharing between or among the parties to those agreements.

1 **SEC. 1102. TOBACCO CONTROL NEGOTIATIONS.**

2 The President, in consultation with the Secretary of
3 State, the Secretary of Health and Human Services, and
4 the United States Trade Representative, shall—

5 (1) act as the lead negotiator for the United
6 States in the area of international tobacco control;

7 (2) coordinate among U.S. foreign policy and
8 trade negotiators in the area of effective inter-
9 national tobacco control policy;

10 (3) work closely with non-governmental groups,
11 including public health groups; and

12 (4) report annually to the Congress on the
13 progress of negotiations to achieve effective inter-
14 national tobacco control policy.

15 **SEC. 1103. REPORT TO CONGRESS.**

16 Not later than 150 days after the enactment of this
17 Act and annually thereafter, the Secretary of Health and
18 Human Services shall transmit to the Congress a report
19 identifying the international fora wherein international to-
20 bacco control efforts may be negotiated.

21 **SEC. 1104. FUNDING.**

22 There are authorized such sums as are necessary to
23 carry out the provisions of this subtitle.

1 **SEC. 1105. PROHIBITION OF FUNDS TO FACILITATE THE EX-**
2 **PORTATION OR PROMOTION OF TOBACCO.**

3 (a) IN GENERAL.—No officer, employee, department,
4 or agency of the United States may promote the sale or
5 export of tobacco or tobacco products, or seek the reduc-
6 tion or removal by any foreign country of restrictions on
7 the marketing of tobacco or tobacco products, unless such
8 restrictions are not applied equally to all tobacco and to-
9 bacco products. The United States Trade Representative
10 shall consult with the Secretary regarding inquiries, nego-
11 tiations, and representations with respect to tobacco and
12 tobacco products, including whether proposed restrictions
13 are reasonable protections of public health.

14 (b) NOTIFICATION.—Whenever such inquiries, nego-
15 tiations, or representations are made, the United States
16 Trade Representative shall notify the Congress within 10
17 days afterwards regarding the nature of the inquiry, nego-
18 tiation, or representation.

19 **SEC. 1106. HEALTH LABELING OF TOBACCO PRODUCTS FOR**
20 **EXPORT.**

21 (a) IN GENERAL.—

22 (1) EXPORTS MUST BE LABELED.—It shall be
23 unlawful for any United States person, directly or
24 through approval or facilitation of a transaction by
25 a foreign person, to make use of the United States
26 mail or of any instrument of interstate commerce to

1 authorize or contribute to the export from the
2 United States any tobacco product unless the to-
3 bacco product packaging contains a warning label
4 that—

5 (A) complies with Federal requirements for
6 labeling of similar tobacco products manufac-
7 tured, imported, or packaged for sale or dis-
8 tribution in the United States; or

9 (B) complies with the specific health haz-
10 ard warning labeling requirements of the for-
11 eign country to which the product is exported.

12 (2) U.S. REQUIREMENTS APPLY IF THE DES-
13 TINATION COUNTRY DOES NOT REQUIRE SPECIFIC
14 HEALTH HAZARD WARNING LABELS.—Subparagraph
15 (B) of paragraph (1) does not apply to exports to
16 a foreign country that does not have any specific
17 health hazard warning label requirements for the to-
18 bacco product being exported.

19 (b) UNITED STATES PERSON DEFINED.—For pur-
20 poses of this section, the term “United States person”
21 means—

22 (1) an individual who is a citizen, national, or
23 resident of the United States; and

24 (2) a corporation, partnership, association,
25 joint-stock company, business trust, unincorporated

1 organization, or sole proprietorship which has its
2 principal place of business in the United States.

3 (c) REPORT TO CONGRESS ON ENFORCEMENT; FEA-
4 SIBILITY REGULATIONS.—

5 (1) THE PRESIDENT.—The President shall—

6 (A) report to the Congress within 90 days
7 after the date of enactment of this Act—

8 (i) regarding methods to ensure com-
9 pliance with subsection (a); and

10 (ii) listing countries whose health
11 warnings related to tobacco products are
12 substantially similar to those in the United
13 States; and

14 (B) promulgate regulations within 1 year
15 after the date of enactment of this Act that will
16 ensure compliance with subsection (a).

17 (2) THE SECRETARY.—The Secretary shall de-
18 termine through regulation the feasibility and prac-
19 ticability of requiring health warning labeling in the
20 language of the country of destination weighing the
21 health and other benefits and economic and other
22 costs. To the greatest extent practicable, the Sec-
23 retary should design a system that requires the lan-
24 guage of the country of destination while minimizing
25 the dislocative effects of such a system.

1 **SEC. 1107. INTERNATIONAL TOBACCO CONTROL AWARE-**
2 **NESS.**

3 (a) ESTABLISHMENT OF INTERNATIONAL TOBACCO
4 CONTROL AWARENESS.—The Secretary is authorized to
5 establish an international tobacco control awareness ef-
6 fort. The Secretary shall—

7 (1) promote efforts to share information and
8 provide education internationally about the health,
9 economic, social, and other costs of tobacco use, in-
10 cluding scientific and epidemiological data related to
11 tobacco and tobacco use and enhancing countries'
12 capacity to collect, analyze, and disseminating such
13 data;

14 (2) promote policies and support and coordinate
15 international efforts, including international agree-
16 ments or arrangements, that seek to enhance the
17 awareness and understanding of the costs associated
18 with tobacco use;

19 (3) support the development of appropriate gov-
20 ernmental control activities in foreign countries,
21 such as assisting countries to design, implement,
22 and evaluate programs and policies used in the
23 United States or other countries; including the train-
24 ing of United States diplomatic and commercial rep-
25 resentatives outside the United States;

1 (4) undertake other activities as appropriate in
2 foreign countries that help achieve a reduction of to-
3 bacco use;

4 (5) permit United States participation in an-
5 nual meetings of government and non-government
6 representatives concerning international tobacco use
7 and efforts to reduce tobacco use;

8 (6) promote mass media campaigns, including
9 paid counter-tobacco advertisements to reverse the
10 image appeal of pro-tobacco messages, especially
11 those that glamorize and “Westernize” tobacco use
12 to young people; and

13 (7) create capacity and global commitment to
14 reduce international tobacco use and prevent youth
15 smoking, including the use of models of previous
16 public health efforts to address global health prob-
17 lems.

18 (b) ACTIVITIES.—

19 (1) IN GENERAL.—The activities under sub-
20 section (a) shall include—

21 (A) public health and education programs;

22 (B) technical assistance;

23 (C) cooperative efforts and support for re-
24 lated activities of multilateral organization and
25 international organizations;

1 (D) training; and

2 (E) such other activities that support the
3 objectives of this section as may be appropriate.

4 (2) GRANTS AND CONTRACTS.—In carrying out
5 this section, the Secretary shall make grants to,
6 enter into and carry out agreements with, and enter
7 into other transactions with any individual, corpora-
8 tion, or other entity, whether within or outside the
9 United States, including governmental and non-
10 governmental organizations, international organiza-
11 tions, and multilateral organizations.

12 (3) TRANSFER OF FUNDS TO AGENCIES.—The
13 Secretary may transfer to any agency of the United
14 States any part of any funds appropriated for the
15 purpose of carrying out this section. Funds author-
16 ized to be appropriated by this section shall be avail-
17 able for obligation and expenditure in accordance
18 with the provisions of this section or in accordance
19 with the authority governing the activities of the
20 agency to which such funds are transferred.

21 (c) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated, from the National To-
23 bacco Trust Fund, to carry out the provisions of this sec-
24 tion, including the administrative costs incurred by any
25 agency of the United States in carrying out this section,

1 \$350,000,000 for each of the fiscal years 1999 through
2 2004, and such sums as may be necessary for each fiscal
3 year thereafter. A substantial amount of such funds shall
4 be granted to non-governmental organizations. Any
5 amount appropriated pursuant to this authorization shall
6 remain available without fiscal year limitation until ex-
7 pended.

8 **Subtitle B—Anti-smuggling** 9 **Provisions**

10 **SEC. 1131. DEFINITIONS.**

11 (a) INCORPORATION OF CERTAIN DEFINITIONS.—In
12 this subtitle, the terms “cigar”, “cigarette”, “person”,
13 “pipe tobacco”, “roll-your-own tobacco”, “smokeless to-
14 bacco”, “State”, “tobacco product”, and “United States”,
15 shall have the meanings given such terms in sections
16 5702(a), 5702(b), 7701(a)(1), 5702(o), 5702(n)(1),
17 5702(p), 3306(j)(1), 5702(e), and 3306(j)(2) respectively
18 of the Internal Revenue Code of 1986.

19 (b) OTHER DEFINITIONS.—In this subtitle:

20 (1) AFFILIATE.—The term “affiliate” means
21 any one of 2 or more persons if 1 of such persons
22 has actual or legal control, directly or indirectly,
23 whether by stock ownership or otherwise, of other or
24 others of such persons, and any 2 or more of such
25 persons subject to common control, actual or legal,

1 directly or indirectly, whether by stock ownership or
2 otherwise.

3 (2) INTERSTATE OR FOREIGN COMMERCE.—The
4 term “interstate or foreign commerce” means any
5 commerce between any State and any place outside
6 thereof, or commerce within any Territory or the
7 District of Columbia, or between points within the
8 same State but through any place outside thereof.

9 (3) SECRETARY.—The term “Secretary” means
10 the Secretary of the Treasury.

11 (4) PACKAGE.—The term “package” means the
12 innermost sealed container irrespective of the mate-
13 rial from which such container is made, in which a
14 tobacco product is placed by the manufacturer and
15 in which such tobacco product is offered for sale to
16 a member of the general public.

17 (5) RETAILER.—The term “retailer” means any
18 dealer who sells, or offers for sale, any tobacco prod-
19 uct at retail. The term “retailer” includes any duty
20 free store that sells, offers for sale, or otherwise dis-
21 tributes at retail in any single transaction 30 or less
22 packages, or it equivalent for other tobacco products.

23 (6) EXPORTER.—The term “exporter” means
24 any person engaged in the business of exporting to-
25 bacco products from the United States for purposes

1 of sale or distribution; and the term “licensed ex-
2 porter” means any such person licensed under the
3 provisions of this subtitle. Any duty-free store that
4 sells, offers for sale, or otherwise distributes to any
5 person in any single transaction more than 30 pack-
6 ages of cigarettes, or its equivalent for other tobacco
7 products as the Secretary shall by regulation pre-
8 scribe, shall be deemed an “exporter” under this
9 subtitle.

10 (7) IMPORTER.—The term “importer” means
11 any person engaged in the business of importing to-
12 bacco products into the United States for purposes
13 of sale or distribution; and the term “licensed im-
14 porter” means any such person licensed under the
15 provisions of this subtitle.

16 (8) INTENTIONALLY.—The term “intentionally”
17 means doing an act, or omitting to do an act, delib-
18 erately, and not due to accident, inadvertence, or
19 mistake. An intentional act does not require that a
20 person knew that his act constituted an offense.

21 (9) MANUFACTURER.— The term “manufac-
22 turer” means any person engaged in the business of
23 manufacturing a tobacco product for purposes of
24 sale or distribution, except that such term shall not
25 include a person who manufactures less than 30,000

1 cigarettes, or its equivalent as determined by regula-
2 tions, in any twelve month period;; and the term “li-
3 censed manufacturer” means any such person li-
4 censed under the provisions of this subtitle, except
5 that such term shall not include a person who pro-
6 duces cigars, cigarettes, smokeless tobacco, or pipe
7 tobacco solely for his own personal consumption or
8 use.

9 (10) WHOLESALER.—The term “wholesaler”
10 means any person engaged in the business of pur-
11 chasing tobacco products for resale at wholesale, or
12 any person acting as an agent or broker for any per-
13 son engaged in the business of purchasing tobacco
14 products for resale at wholesale, and the term “li-
15 censed wholesaler” means any such person licensed
16 under the provisions of this subtitle.

17 **SEC. 1132. TOBACCO PRODUCT LABELING REQUIREMENTS.**

18 (a) IN GENERAL.—It is unlawful for any person to
19 sell, or ship or deliver for sale or shipment, or otherwise
20 introduce in interstate or foreign commerce, or to receive
21 therein, or to remove from Customs custody for use, any
22 tobacco product unless such product is packaged and la-
23 beled in conformity with this section.

24 (b) LABELING.—

1 (1) IDENTIFICATION.—Not later than 1 year
2 after the date of enactment of this Act, the Sec-
3 retary shall promulgate regulations that require each
4 manufacturer or importer of tobacco products to leg-
5 ibly print a unique serial number on all packages of
6 tobacco products manufactured or imported for sale
7 or distribution. The serial number shall be designed
8 to enable the Secretary to identify the manufacturer
9 or importer of the product, and the location and
10 date of manufacture or importation. The Secretary
11 shall determine the size and location of the serial
12 number.

13 (2) MARKING REQUIREMENTS FOR EXPORTS.—
14 Each package of a tobacco product that is exported
15 shall be marked for export from the United States.
16 The Secretary shall promulgate regulations to deter-
17 mine the size and location of the mark and under
18 what circumstances a waiver of this paragraph shall
19 be granted.

20 (c) PROHIBITION ON ALTERATION.—It is unlawful
21 for any person to alter, mutilate, destroy, obliterate, or
22 remove any mark or label required under this subtitle
23 upon a tobacco product in or affecting commerce, except
24 pursuant to regulations of the Secretary authorizing re-

1 labeling for purposes of compliance with the requirements
2 of this section or of State law.

3 **SEC. 1133. TOBACCO PRODUCT LICENSES.**

4 (a) IN GENERAL.—Not later than 1 year after the
5 date of enactment of this Act, the Secretary shall establish
6 a program under which tobacco product licenses are issued
7 to manufacturers, importers, exporters, and wholesalers of
8 tobacco products.

9 (b)(1) ELIGIBILITY.—A person is entitled to a license
10 unless the Secretary finds—

11 (A) that such person has been previously con-
12 victed of a Federal crime relating to tobacco, includ-
13 ing the taxation thereof;

14 (B) that such person has, within 5 years prior
15 to the date of application, been previously convicted
16 of any felony under Federal or State law; or

17 (C) that such person is, by virtue of his busi-
18 ness experience, financial standing, or trade connec-
19 tions, not likely to maintain such operations in con-
20 formity with Federal law.

21 (2) CONDITIONS.—The issuance of a license under
22 this section shall be conditioned upon the compliance with
23 the requirements of this subtitle, all Federal laws relating
24 to the taxation of tobacco products, chapter 114 of title

1 18, United States Code, and any regulations issued pursu-
2 ant to such statutes.

3 (c) REVOCATION, SUSPENSION, AND ANNULMENT.—

4 The program established under subsection (a) shall permit
5 the Secretary to revoke, suspend, or annul a license issued
6 under this section if the Secretary determines that the
7 terms or conditions of the license have not been complied
8 with. Prior to any action under this subsection, the Sec-
9 retary shall provide the licensee with due notice and the
10 opportunity for a hearing.

11 (d) RECORDS AND AUDITS.—The Secretary shall,
12 under the program established under subsection (a), re-
13 quire all license holders to keep records concerning the
14 chain of custody of the tobacco products that are the sub-
15 ject of the license and make such records available to the
16 Secretary for inspection and audit.

17 (e) RETAILERS.—This section does not apply to re-
18 tailers of tobacco products, except that retailers shall
19 maintain records of receipt, and such records shall be
20 available to the Secretary for inspection and audit. An or-
21 dinary commercial record or invoice will satisfy this re-
22 quirement provided such record shows the date of receipt,
23 from whom such products were received and the quantity
24 of tobacco products received.

1 **SEC. 1134. PROHIBITIONS.**

2 (a) IMPORTATION AND SALE.—It is unlawful, except
3 pursuant to a license issued by the Secretary under this
4 subtitle—

5 (1) to engage in the business of importing to-
6 bacco products into the United States; or

7 (2) for any person so engaged to sell, offer, or
8 deliver for sale, contract to sell, or ship, in or affect-
9 ing commerce, directly or indirectly or through an
10 affiliate, tobacco products so imported.

11 (b) MANUFACTURE AND SALE.—It is unlawful, ex-
12 cept pursuant to a license issued by the Secretary under
13 this subtitle—

14 (1) to engage in the business of manufacturing,
15 packaging or warehousing tobacco products; or

16 (2) for any person so engaged to sell, offer, or
17 deliver for sale, contract to sell, or ship, in or affect-
18 ing commerce, directly or indirectly or through an
19 affiliate, tobacco products so manufactured, pack-
20 aged, or warehoused.

21 (c) WHOLESALE.—It is unlawful, except pursuant to
22 a license issued by the Secretary under this subtitle—

23 (1) to engage in the business of purchasing for
24 resale at wholesale tobacco products, or, as a prin-
25 cipal or agent, to sell, offer for sale, negotiate for,
26 or hold out by solicitation, advertisement, or other-

1 wise as selling, providing, or arranging for, the pur-
2 chase for resale at wholesale of tobacco products; or

3 (2) for any person so engaged to receive or sell,
4 offer or deliver for sale, contract to sell, or ship, in
5 or affecting commerce, directly or indirectly or
6 through an affiliate, tobacco products so purchased.

7 (d) EXPORTATION.—

8 (1) IN GENERAL.—It is unlawful, except pursu-
9 ant to a license issued by the Secretary under this
10 subtitle—

11 (A) to engage in the business of exporting
12 tobacco products from the United States; or

13 (B) for any person so engaged to sell,
14 offer, or deliver for sale, contract to sell, or
15 ship, in or affecting commerce, directly or indi-
16 rectly or through an affiliate, tobacco products
17 received for export.

18 (2) REPORT.—Prior to exportation of tobacco
19 products from the United States, the exporter shall
20 submit a report in such manner and form as the
21 Secretary may by regulation prescribe to enable the
22 Secretary to identify the shipment and assure that
23 it reaches its intended destination.

24 (3) AGREEMENTS WITH FOREIGN GOVERN-
25 MENTS.—The Secretary is authorized to enter into

1 agreements with foreign governments to exchange or
2 share information contained in reports received from
3 exporters of tobacco products if the Secretary be-
4 lieves that such an agreement will assist in—

5 (A) insuring compliance with any law or
6 regulation enforced or administered by an agen-
7 cy of the United States; or

8 (B) preventing or detecting violation of the
9 laws or regulations of a foreign government
10 with which the Secretary has entered into an
11 agreement.

12 Such information may be exchanged or shared with
13 a foreign government only if the Secretary obtains
14 assurances from such government that the informa-
15 tion will be held in confidence and used only for the
16 purpose of preventing or detecting violations of the
17 laws or regulations of such government or the
18 United States and, provided further that no infor-
19 mation may be exchanged or shared with any gov-
20 ernment that has violated such assurances.

21 (e) UNLAWFUL ACTS.—

22 (1) UNLICENSED RECEIPT OR DELIVERY.—It is
23 unlawful for any licensed importer, licensed manu-
24 facturer, or licensed wholesaler intentionally to ship,
25 transport, deliver or receive any tobacco products

1 from or to any person other than a person licensed
2 under this chapter or a retailer licensed under the
3 provisions of this Act, except a licensed importer
4 may receive foreign tobacco products from a foreign
5 manufacturer or a foreign distributor that have not
6 previously entered the United States.

7 (2) RECEIPT OF RE-IMPORTED GOODS.—It is
8 unlawful for any person, except a licensed manufac-
9 turer or a licensed exporter to receive any tobacco
10 products that have previously been exported and re-
11 turned to the United States.

12 (3) DELIVERY BY EXPORTER.—It is unlawful
13 for any licensed exporter intentionally to ship, trans-
14 port, sell or deliver for sale any tobacco products to
15 any person other than a licensed manufacturer or
16 foreign purchaser.

17 (4) SHIPMENT OF EXPORT-ONLY GOODS.—It is
18 unlawful for any person other than a licensed ex-
19 porter intentionally to ship, transport, receive or
20 possess, for purposes of resale, any tobacco product
21 in packages marked “FOR EXPORT FROM THE
22 UNITED STATES,” other than for direct return to
23 the manufacturer or exporter for re-packing or for
24 re-exportation.

1 (5) FALSE STATEMENTS.—It is unlawful for
2 any licensed manufacturer, licensed exporter, li-
3 censed importer, or licensed wholesaler to make in-
4 tentionally any false entry in, to fail willfully to
5 make appropriate entry in, or to fail willfully to
6 maintain properly any record or report that he is re-
7 quired to keep as required by this chapter or the
8 regulations promulgated thereunder.

9 (f) EFFECTIVE DATE.—The provisions of this section
10 shall become effective on the date that is 365 days after
11 the date of enactment of this Act.

12 **SEC. 1135. LABELING OF PRODUCTS SOLD BY NATIVE**
13 **AMERICANS.**

14 The Secretary, in consultation with the Secretary of
15 the Interior, shall promulgate regulations that require that
16 each package of a tobacco product that is sold on an In-
17 dian reservation (as defined in section 403(9) of the In-
18 dian Child Protection and Family Violence Prevention Act
19 (25 U.S.C. 3202(9)) be labeled as such. Such regulations
20 shall include requirements for the size and location of the
21 label.

1 **SEC. 1136. LIMITATION ON ACTIVITIES INVOLVING TO-**
2 **BACCO PRODUCTS IN FOREIGN TRADE**
3 **ZONES.**

4 (a) MANUFACTURE OF TOBACCO PRODUCTS IN FOR-
5 EIGN TRADE ZONES.—No person shall manufacture a to-
6 bacco product in any foreign trade zone, as defined for
7 purposes of the Act of June 18, 1934 (19 U.S.C. 81a et
8 seq.).

9 (b) EXPORTING OR IMPORTING FROM OR INTO A
10 FOREIGN TRADE ZONE.—Any person exporting or import-
11 ing tobacco products from or into a foreign trade zone,
12 as defined for purposes of the Act of June 18, 1934 (19
13 U.S.C. 81a et seq.), shall comply with the requirements
14 provided in this subtitle. In any case where the person op-
15 erating in a foreign trade zone is acting on behalf of a
16 person licensed under this subtitle, qualification as an im-
17 porter or exporter will not be required, if such person com-
18 plies with the requirements set forth in section 1134(d)(2)
19 and (3) of this subtitle.

20 **SEC. 1137. JURISDICTION; PENALTIES; COMPROMISE OF LI-**
21 **ABILITY.**

22 (a) JURISDICTION.—The District Courts of the
23 United States, and the United States Court for any Terri-
24 tory, of the District where the offense is committed or of
25 which the offender is an inhabitant or has its principal
26 place of business, are vested with jurisdiction of any suit

1 brought by the Attorney General in the name of the
2 United States, to prevent and restrain violations of any
3 of the provisions of this subtitle.

4 (b) PENALTIES.—Any person violating any of the
5 provisions of this subtitle shall, upon conviction, be fined
6 as provided in section 3571 of title 18, United States
7 Code, imprisoned for not more than 5 years, or both.

8 (c) CIVIL PENALTIES.—The Secretary may, in lieu
9 of referring violations of this subtitle for criminal prosecu-
10 tion, impose a civil penalty of not more than \$10,000 for
11 each offense.

12 (d) COMPROMISE OF LIABILITY.—The Secretary is
13 authorized, with respect to any violation of this subtitle,
14 to compromise the liability arising with respect to a viola-
15 tion of this subtitle—

16 (1) upon payment of a sum not in excess of
17 \$10,000 for each offense, to be collected by the Sec-
18 retary and to be paid into the Treasury as mis-
19 cellaneous receipts; and

20 (2) in the case of repetitious violations and in
21 order to avoid multiplicity of criminal proceedings,
22 upon agreement to a stipulation, that the United
23 States may, on its own motion upon 5 days notice
24 to the violator, cause a consent decree to be entered

1 by any court of competent jurisdiction enjoining the
2 repetition of such violation.

3 (e) FORFEITURE.—

4 (1) The Secretary may seize and forfeit any
5 conveyance, tobacco products, or monetary instru-
6 ment (as defined in section 5312 of title 31, United
7 States Code) involved in a violation of this subtitle,
8 or any property, real or personal, which constitutes
9 or is derived from proceeds traceable to a violation
10 of this chapter. For purposes of this paragraph, the
11 provisions of subsections (a)(2), (b)(2), and (c)
12 through (j) of section 981 of title 18, United States
13 Code, apply to seizures and forfeitures under this
14 paragraph insofar as they are applicable and not in-
15 consistent with the provisions of this subtitle.

16 (2) The court, in imposing sentence upon a per-
17 son convicted of an offense under this subtitle, shall
18 order that the person forfeit to the United States
19 any property described in paragraph (1). The seizure
20 and forfeiture of such property shall be governed by
21 subsections (b), (c), and (e) through (p) of section
22 853 of title 21, United States Code, insofar as they
23 are applicable and not inconsistent with the provi-
24 sions of this subtitle.

1 **SEC. 1138. AMENDMENTS TO THE CONTRABAND CIGARETTE**
2 **TRAFFICKING ACT.**

3 (a) DEFINITIONS.—Section 2341 of title 18, United
4 States Code, is amended—

5 (1) by striking “60,000” and inserting
6 “30,000” in paragraph (2);

7 (2) by inserting after “payment of cigarette
8 taxes,” in paragraph (2) the following: “or in the
9 case of a State that does not require any such indi-
10 cation of tax payment, if the person in possession of
11 the cigarettes is unable to provide any evidence that
12 the cigarettes are moving legally in interstate com-
13 merce,”;

14 (3) by striking “and” at the end of paragraph
15 (4);

16 (4) by striking “Treasury.” in paragraph (5)
17 and inserting “Treasury;”; and

18 (5) by adding at the end thereof the following:

19 “(6) the term ‘tobacco product’ means cigars,
20 cigarettes, smokeless tobacco, roll your own and pipe
21 tobacco (as such terms are defined in section 5701
22 of the Internal Revenue Code of 1986); and

23 “(7) the term ‘contraband tobacco product’
24 means—

25 “(A) a quantity in excess of 30,000 of any
26 tobacco product that is manufactured, sold,

1 shipped, delivered, transferred, or possessed in
2 violation of Federal laws relating to the dis-
3 tribution of tobacco products; and

4 “(B) a quantity of tobacco product that is
5 equivalent to an excess of 30,000 cigarettes, as
6 determined by regulation, which bears no evi-
7 dence of the payment of applicable State to-
8 bacco taxes in the State where such tobacco
9 products are found, if such State requires a
10 stamp, impression, or other indication to be
11 placed on packages or other containers of prod-
12 uct to evidence payment of tobacco taxes, or in
13 the case of a State that does not require any
14 such indication of tax payment, if the person in
15 possession of the tobacco product is unable to
16 provide any evidence that the tobacco products
17 are moving legally in interstate commerce and
18 which are in the possession of any person other
19 than a person defined in paragraph (2) of this
20 section.”.

21 (b) UNLAWFUL ACTS.—Section 2342 of title 18,
22 United States Code, is amended—

23 (1) by inserting “or contraband tobacco prod-
24 ucts” before the period in subsection (a); and

25 (2) by adding at the end thereof the following:

1 “(c) It is unlawful for any person—

2 “(1) knowingly to make any false statement or
3 representation with respect to the information re-
4 quired by this chapter to be kept in the records or
5 reports of any person who ships, sells, or distributes
6 any quantity of cigarettes in excess of 30,000 in a
7 single transaction, or tobacco products in such
8 equivalent quantities as shall be determined by regu-
9 lation; or

10 “(2) knowingly to fail or knowingly to fail to
11 maintain distribution records or reports, alter or ob-
12 literate required markings, or interfere with any in-
13 spection as required with respect to such quantity of
14 cigarettes or other tobacco products.

15 “(d) It shall be unlawful for any person knowingly
16 to transport cigarettes or other tobacco products under a
17 false bill of lading or without any bill of lading.”.

18 (c) RECORDKEEPING.—Section 2343 of title 18,
19 United States Code, is amended—

20 (1) by striking “60,000” in subsection (a) and
21 inserting “30,000”;

22 (2) by inserting after “transaction” in sub-
23 section (a) the following: “or, in the case of other to-
24 bacco products an equivalent quantity as determined
25 by regulation,”;

1 (3) by striking the last sentence of subsection
2 (a) and inserting the following:

3 “Except as provided in subsection (c) of this section, noth-
4 ing contained herein shall authorize the Secretary to re-
5 quire reporting under this section.”;

6 (4) by striking “60,000” in subsection (b) and
7 inserting “30,000”;

8 (5) by inserting after “transaction” in sub-
9 section (b) the following: “or, in the case of other to-
10 bacco products an equivalent quantity as determined
11 by regulation,”; and

12 (6) by adding at the end thereof the following:

13 “(c)(1) Any person who ships, sells, or distributes for
14 resale tobacco products in interstate commerce, whereby
15 such tobacco products are shipped into a State taxing the
16 sale or use of such tobacco products or who advertises or
17 offers tobacco products for such sale or transfer and ship-
18 ment shall—

19 “(A) first file with the tobacco tax adminis-
20 trator of the State into which such shipment is made
21 or in which such advertisement or offer is dissemi-
22 nated, a statement setting for the persons name, and
23 trade name (if any), and the address of the persons
24 principal place of business and of any other place of
25 business; and

1 “(B) not later than the 10th day of each
2 month, file with the tobacco tax administrator of the
3 State into which such shipment is made a memoran-
4 dum or a copy of the invoice covering each and every
5 shipment of tobacco products made during the pre-
6 vious month into such State; the memorandum or
7 invoice in each case to include the name and address
8 of the person to whom the shipment was made, the
9 brand, and the quantity thereof.

10 “(2) The fact that any person ships or delivers for
11 shipment any tobacco products shall, if such shipment is
12 into a State in which such person has filed a statement
13 with the tobacco tax administrator under paragraph
14 (1)(A) of this subsection, be presumptive evidence that
15 such tobacco products were sold, shipped, or distributed
16 for resale by such person.

17 “(3) For purposes of this subsection—

18 “(A) the term ‘use’ includes consumption, stor-
19 age, handling, or disposal of tobacco products; and

20 “(B) the term ‘tobacco tax administrator’
21 means the State official authorized to administer to-
22 bacco tax laws of the State.”.

23 (e) PENALTIES.—Section 2344 of title 18, United
24 States Code, is amended—

1 (1) by inserting “or (c)” in subsection (b) after
2 “section 2344(b)”;

3 (2) by inserting “or contraband tobacco prod-
4 ucts” after “cigarettes” in subsection (c); and

5 (3) by adding at the end thereof the following:

6 “(d) Any proceeds from the unlawful distribution of
7 tobacco shall be subject to seizure and forfeiture under
8 section 981(a)(1)(C).”.

9 (f) REPEAL OF FEDERAL LAW RELATING TO COL-
10 LECTION OF STATE CIGARETTE TAXES.—The Act of Oc-
11 tober 19, 1949, (63 Stat. 884; 15 U.S.C. 375-378) is here-
12 by repealed.

13 **SEC. 1139. FUNDING.**

14 (a) LICENSE FEES.—The Secretary may, in the Sec-
15 retary’s sole discretion, set the fees for licenses required
16 by this chapter, in such amounts as are necessary to re-
17 cover the costs of administering the provisions of this
18 chapter, including preventing trafficking in contraband to-
19 bacco products.

20 (b) DISPOSITION OF FEES.—Fees collected by the
21 Secretary under this chapter shall be deposited in an ac-
22 count with the Treasury of the United States that is spe-
23 cially designated for paying the costs associated with the
24 administration or enforcement of this chapter or any other
25 Federal law relating to the unlawful trafficking of tobacco

1 products. The Secretary is authorized and directed to pay
2 out of any funds available in such account any expenses
3 incurred by the Federal Government in administering and
4 enforcing this chapter or any other Federal law relating
5 to the unlawful trafficking in tobacco products (including
6 expenses incurred for the salaries and expenses of individ-
7 uals employed to provide such services). None of the funds
8 deposited into such account shall be available for any pur-
9 pose other than making payments authorized under the
10 preceding sentence.

11 **SEC. 1140. RULES AND REGULATIONS.**

12 The Secretary shall prescribe all needful rules and
13 regulations for the enforcement of this chapter, including
14 all rules and regulations that are necessary to ensure the
15 lawful distribution of tobacco products in interstate or for-
16 eign commerce.

17 **Subtitle C—Other Provisions**

18 **SEC. 1161. IMPROVING CHILD CARE AND EARLY CHILD-**
19 **HOOD DEVELOPMENT.**

20 (a) IN GENERAL.—There are authorized to be appro-
21 priated to the Secretary from the National Tobacco Trust
22 Fund such sums as may be necessary for each fiscal year
23 to be used by the Secretary for the following purposes:

24 (1) Improving the affordability of child care
25 through increased appropriations for child care

1 under the Child Care and Development Block Grant
2 Act of 1990 (42 U.S.C. 9859 et seq.).

3 (2) Enhancing the quality of child care and
4 early childhood development through the provision of
5 grants to States under the Child Care and Develop-
6 ment Block Grant Act of 1990 (42 U.S.C. 9859 et
7 seq.).

8 (3) Expanding the availability and quality of
9 school-age care through the provision of grants to
10 States under the Child Care and Development Block
11 Grant Act of 1990 (42 U.S.C. 9859 et seq.).

12 (4) Assisting young children by providing
13 grants to local collaboratives under the Child Care
14 and Development Block Grant Act of 1990 (42
15 U.S.C. 9859 et seq.) for the purpose of improving
16 parent education and supportive services, strength-
17 ening the quality of child care, improving health
18 services, and improving services for children with
19 disabilities.

20 (b) SUPPLEMENT NOT SUPPLANT.—Amounts made
21 available to a State under this section shall be used to
22 supplement and not supplant other Federal, State, and
23 local funds provided for programs that serve the health
24 and developmental needs of children. Amounts provided
25 to the State under any of the provisions of law referred

1 to in this section shall not be reduced solely as a result
2 of the availability of funds under this section.

3 **SEC. 1162. BAN OF SALE OF TOBACCO PRODUCTS THROUGH**
4 **THE USE OF VENDING MACHINES.**

5 (a) BAN OF SALE OF TOBACCO PRODUCTS THROUGH
6 THE USE OF VENDING MACHINES.—Effective 12 months
7 after the date of enactment of this Act, it shall be unlawful
8 to sell tobacco products through the use of a vending ma-
9 chine.

10 (b) COMPENSATION FOR BANNED VENDING MA-
11 CHINES.—

12 (1) IN GENERAL.—The owners and operators of
13 tobacco vending machines shall be reimbursed, sub-
14 ject to the availability of appropriations under sub-
15 section (d), for the fair market value of their tobacco
16 vending machines.

17 (2) TOBACCO VENDING REIMBURMENT COR-
18 PORATION.—

19 (A) CORPORATION.—Reimbursment shall
20 be directed through a private, nonprofit cor-
21 poration established in the District of Colum-
22 bia, known as the Tobacco Vending
23 Reimburement Corporation (in this section re-
24 ferred to as the “Corporation”). Except as oth-
25 erwise provided in this section, the Corporation

1 is subject to, and has all the powers conferred
2 upon a nonprofit corporation by the District of
3 Columbia Nonprofit Corporation Act (D.C.
4 Code section 29–501 et seq.).

5 (B) DUTIES.—The Corporation shall—

6 (i) disburse compensation funds to
7 vending companies under this section;

8 (ii) verify operational machines; and

9 (iii) maintain complete records of ma-
10 chine verification and accountings of dis-
11 bursements and administration of the com-
12 pensation fund established under para-
13 graph (4).

14 (3) MANAGEMENT OF CORPORATION.—

15 (A) BOARD OF DIRECTORS.—The Corpora-
16 tion shall be managed by a Board of Directors
17 that—

18 (i) consists of distinguished Americans
19 with experience in finance, public policy, or
20 fund management;

21 (ii) includes at least 1 member of the
22 United States tobacco vending machine in-
23 dustry;

24 (iii) shall be paid an annual salary in
25 an amount determined by the President of

1 the Corporation not to exceed \$40,000 in-
2 dividually, out of amounts transferred to
3 the Corporation under paragraph (4)(A);

4 (iv) shall appoint a President to man-
5 age the day-to-day activities of the Cor-
6 poration;

7 (v) shall develop guidelines by which
8 the President shall direct the Corporation;

9 (vi) shall retain a national accounting
10 firm to verify the distribution of funds and
11 audit the compensation fund established
12 under paragraph (4);

13 (vii) shall retain such legal, manage-
14 ment, or consulting assistance as is nec-
15 essary and reasonable; and

16 (viii) shall periodically report to Con-
17 gress regarding the activities of the Cor-
18 poration.

19 (B) DUTIES OF THE PRESIDENT OF THE
20 CORPORATION.—The President of the Corpora-
21 tion shall—

22 (i) hire appropriate staff;

23 (ii) prepare the report of the Board of
24 Directors of the Corporation required
25 under subparagraph (A)(viii); and

1 (iii) oversee Corporation functions, in-
2 cluding verification of machines, adminis-
3 tration and disbursement of funds, mainte-
4 nance of complete records, operation of ap-
5 peals procedures, and other directed func-
6 tions.

7 (4) COMPENSATION FUND.—

8 (A) RULES FOR DISBURSEMENT OF
9 FUNDS.—

10 (i) PAYMENTS TO OWNERS AND OPER-
11 ATORS.—The Corporation shall disburse
12 funds to compensate the owners and opera-
13 tors of tobacco vending machines in ac-
14 cordance with the following:

15 (I) The fair market value of each
16 tobacco vending machine verified by
17 the Corporation President in accord-
18 ance with subparagraph (C), and
19 proven to have been in operation be-
20 fore August 10, 1995, shall be dis-
21 bursed to the owner of the machine
22 seeking compensation.

23 (II) No compensation shall be
24 made for a spiral glass front vending
25 machine.

1 (ii) OTHER PAYMENTS.—Funds ap-
2 propriated to the Corporation under sub-
3 section (d) may be used to pay the admin-
4 istrative costs of the Corporation that are
5 necessary and proper or required by law.
6 The total amount paid by the Corporation
7 for administrative and overhead costs, in-
8 cluding accounting fees, legal fees, consult-
9 ant fees, and associated administrative
10 costs shall not exceed 1 percent of the total
11 amount appropriated to the Corporation
12 under subsection (d).

13 (B) VERIFICATION OF VENDING MA-
14 CHINES.—Verification of vending machines
15 shall be based on copies of official State vend-
16 ing licenses, company computerized or hand-
17 written sales records, or physical inspection by
18 the Corporation President or by an inspection
19 agent designated by the President. The Cor-
20 poration President and the Board of Directors
21 of the Corporation shall work vigorously to pre-
22 vent and prosecute any fraudulent claims sub-
23 mitted for compensation.

24 (C) RETURN OF ACCOUNT FUNDS NOT DIS-
25 TRIBUTED TO VENDORS.—The Corporation

1 shall be dissolved on the date that is 4 years
2 after the date of enactment of this Act. Any
3 funds not dispersed or allocated to claims pend-
4 ing as of that date shall be transferred to a
5 public anti-smoking trust, or used for such
6 other purposes as Congress may designate.

7 (c) SETTLEMENT OF LEGAL CLAIMS PENDING
8 AGAINST THE UNITED STATES.—Acceptance of a com-
9 pensation payment from the Corporation by a vending ma-
10 chine owner or operator shall settle all pending and future
11 claims of the owner or operator against the United States
12 that are based on, or related to, the ban of the use of
13 tobacco vending machines imposed under this section and
14 any other laws or regulations that limit the use of tobacco
15 vending machines.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to the Corporation from
18 funds not otherwise obligated in the Treasury or out of
19 the National Tobacco Trust Fund, such sums as may be
20 necessary to carry out this section.

21 **SEC. 1163. AMENDMENTS TO THE EMPLOYEE RETIREMENT**
22 **INCOME SECURITY ACT OF 1974.**

23 (a) IN GENERAL.—Subpart B of part 7 of subtitle
24 B of title I of the Employee Retirement Income Security

1 Act of 1974 (29 U.S.C. 1185 et seq.) is amended by add-
2 ing at the end the following new section:

3 **“SEC. 713. REQUIRED COVERAGE FOR MINIMUM HOSPITAL**
4 **STAY FOR MASTECTOMIES AND LYMPH NODE**
5 **DISSECTIONS FOR THE TREATMENT OF**
6 **BREAST CANCER AND COVERAGE FOR RE-**
7 **CONSTRUCTIVE SURGERY FOLLOWING**
8 **MASTECTOMIES.**

9 “(a) INPATIENT CARE.—

10 “(1) IN GENERAL.—A group health plan, and a
11 health insurance issuer providing health insurance
12 coverage in connection with a group health plan,
13 that provides medical and surgical benefits shall en-
14 sure that inpatient coverage with respect to the sur-
15 gical treatment of breast cancer (including a mastec-
16 tomy, lumpectomy, or lymph node dissection for the
17 treatment of breast cancer) is provided for a period
18 of time as is determined by the attending physician,
19 in his or her professional judgment consistent with
20 generally accepted medical standards, in consultation
21 with the patient, and subject to subsection (d), to be
22 medically appropriate.

23 “(2) EXCEPTION.—Nothing in this section shall
24 be construed as requiring the provision of inpatient
25 coverage if the attending physician in consultation

1 with the patient determine that a shorter period of
2 hospital stay is medically appropriate.

3 “(b) RECONSTRUCTIVE SURGERY.—A group health
4 plan, and a health insurance issuer providing health insur-
5 ance coverage in connection with a group health plan, that
6 provides medical and surgical benefits with respect to a
7 mastectomy shall ensure that, in a case in which a mastec-
8 tomy patient elects breast reconstruction, coverage is pro-
9 vided for—

10 “(1) all stages of reconstruction of the breast
11 on which the mastectomy has been performed;

12 “(2) surgery and reconstruction of the other
13 breast to produce a symmetrical appearance; and

14 “(3) the costs of prostheses and complications
15 of mastectomy including lymphedemas;

16 in the manner determined by the attending physician and
17 the patient to be appropriate. Such coverage may be sub-
18 ject to annual deductibles and coinsurance provisions as
19 may be deemed appropriate and as are consistent with
20 those established for other benefits under the plan or cov-
21 erage. Written notice of the availability of such coverage
22 shall be delivered to the participant upon enrollment and
23 annually thereafter.

24 “(c) NOTICE.—A group health plan, and a health in-
25 surance issuer providing health insurance coverage in con-

1 nection with a group health plan shall provide notice to
2 each participant and beneficiary under such plan regard-
3 ing the coverage required by this section in accordance
4 with regulations promulgated by the Secretary. Such no-
5 tice shall be in writing and prominently positioned in any
6 literature or correspondence made available or distributed
7 by the plan or issuer and shall be transmitted—

8 “(1) in the next mailing made by the plan or
9 issuer to the participant or beneficiary;

10 “(2) as part of any yearly informational packet
11 sent to the participant or beneficiary; or

12 “(3) not later than January 1, 1998;
13 whichever is earlier.

14 “(d) NO AUTHORIZATION REQUIRED.—

15 “(1) IN GENERAL.—An attending physician
16 shall not be required to obtain authorization from
17 the plan or issuer for prescribing any length of stay
18 in connection with a mastectomy, a lumpectomy, or
19 a lymph node dissection for the treatment of breast
20 cancer.

21 “(2) PRENOTIFICATION.—Nothing in this sec-
22 tion shall be construed as preventing a group health
23 plan from requiring prenotification of an inpatient
24 stay referred to in this section if such requirement
25 is consistent with terms and conditions applicable to

1 other inpatient benefits under the plan, except that
2 the provision of such inpatient stay benefits shall not
3 be contingent upon such notification.

4 “(e) PROHIBITIONS.—A group health plan, and a
5 health insurance issuer offering group health insurance
6 coverage in connection with a group health plan, may
7 not—

8 “(1) deny to a patient eligibility, or continued
9 eligibility, to enroll or to renew coverage under the
10 terms of the plan, solely for the purpose of avoiding
11 the requirements of this section;

12 “(2) provide monetary payments or rebates to
13 individuals to encourage such individuals to accept
14 less than the minimum protections available under
15 this section;

16 “(3) penalize or otherwise reduce or limit the
17 reimbursement of an attending provider because
18 such provider provided care to an individual partici-
19 pant or beneficiary in accordance with this section;

20 “(4) provide incentives (monetary or otherwise)
21 to an attending provider to induce such provider to
22 provide care to an individual participant or bene-
23 ficiary in a manner inconsistent with this section;
24 and

1 “(5) subject to subsection (f)(3), restrict bene-
2 fits for any portion of a period within a hospital
3 length of stay required under subsection (a) in a
4 manner which is less favorable than the benefits pro-
5 vided for any preceding portion of such stay.

6 “(f) RULES OF CONSTRUCTION.—

7 “(1) IN GENERAL.—Nothing in this section
8 shall be construed to require a patient who is a par-
9 ticipant or beneficiary—

10 “(A) to undergo a mastectomy or lymph
11 node dissection in a hospital; or

12 “(B) to stay in the hospital for a fixed pe-
13 riod of time following a mastectomy or lymph
14 node dissection.

15 “(2) LIMITATION.—This section shall not apply
16 with respect to any group health plan, or any group
17 health insurance coverage offered by a health insur-
18 ance issuer, which does not provide benefits for hos-
19 pital lengths of stay in connection with a mastec-
20 tomy or lymph node dissection for the treatment of
21 breast cancer.

22 “(3) COST SHARING.—Nothing in this section
23 shall be construed as preventing a group health plan
24 or issuer from imposing deductibles, coinsurance, or
25 other cost-sharing in relation to benefits for hospital

1 lengths of stay in connection with a mastectomy or
2 lymph node dissection for the treatment of breast
3 cancer under the plan (or under health insurance
4 coverage offered in connection with a group health
5 plan), except that such coinsurance or other cost-
6 sharing for any portion of a period within a hospital
7 length of stay required under subsection (a) may not
8 be greater than such coinsurance or cost-sharing for
9 any preceding portion of such stay.

10 “(4) LEVEL AND TYPE OF REIMBURSE-
11 MENTS.—Nothing in this section shall be construed
12 to prevent a group health plan or a health insurance
13 issuer offering group health insurance coverage from
14 negotiating the level and type of reimbursement with
15 a provider for care provided in accordance with this
16 section.

17 “(g) PREEMPTION, RELATION TO STATE LAWS.—

18 “(1) IN GENERAL.—Nothing in this section
19 shall be construed to preempt any State law in effect
20 on the date of enactment of this section with respect
21 to health insurance coverage that—

22 “(A) such State law requires such coverage
23 to provide for at least a 48-hour hospital length
24 of stay following a mastectomy performed for
25 treatment of breast cancer and at least a 24-

1 hour hospital length of stay following a lymph
2 node dissection of breast cancer;

3 “(B) requires coverage of at least the cov-
4 erage of reconstructive breast surgery otherwise
5 required under this section; or

6 “(C) requires coverage for breast cancer
7 treatments (including breast reconstruction) in
8 accordance with scientific evidence-based prac-
9 tices or guidelines recommended by established
10 medical associations.

11 “(2) APPLICATION OF SECTION.—With respect
12 to a State law—

13 “(A) described in paragraph (1)(A), the
14 provisions of this section relating to breast re-
15 construction shall apply in such State; and

16 “(B) described in paragraph (1)(B), the
17 provisions of this section relating to length of
18 stays for surgical breast treatment shall apply
19 in such State.

20 “(3) ERISA.—Nothing in this section shall be
21 construed to affect or modify the provisions of sec-
22 tion 514 with respect to group health plans.”.

23 (b) CLERICAL AMENDMENT.—The table of contents
24 in section 1 of the Employee Retirement Income Security
25 Act of 1974 (29 U.S.C. 1001 note) is amended by insert-

1 ing after the item relating to section 712 the following
 2 new item:

“Sec. 713. Required coverage for minimum hospital stay for mastectomies and lymph node dissections for the treatment of breast cancer and coverage for reconstructive surgery following mastectomies.”.

3 (c) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by
 5 this section shall apply with respect to plan years be-
 6 ginning on or after the date of enactment of this
 7 Act.

8 (2) SPECIAL RULE FOR COLLECTIVE BARGAIN-
 9 ING AGREEMENTS.—In the case of a group health
 10 plan maintained pursuant to 1 or more collective
 11 bargaining agreements between employee representa-
 12 tives and 1 or more employers, any plan amendment
 13 made pursuant to a collective bargaining agreement
 14 relating to the plan which amends the plan solely to
 15 conform to any requirement added by this section
 16 shall not be treated as a termination of such collec-
 17 tive bargaining agreement.

18 **TITLE XII—ASBESTOS-RELATED** 19 **TOBACCO CLAIMS**

20 **SEC. 1201. NATIONAL TOBACCO TRUST FUNDS AVAILABLE** 21 **UNDER FUTURE LEGISLATION.**

22 If the Congress enacts qualifying legislation after the
 23 date of enactment of this Act to provide for the payment
 24 of asbestos claims, then amounts in the National Tobacco

1 Trust Fund established by title IV of this Act set aside
 2 for public health expenditures shall be available, as pro-
 3 vided by appropriation Acts, to make those payments. For
 4 purposes of this section, the term “qualifying legislation”
 5 means a public law that amends this Act and changes the
 6 suballocations of funds set aside for public health expendi-
 7 tures under title IV of this Act to provide for the payment
 8 of those claims.

9 **TITLE XIII—VETERANS’** 10 **BENEFITS**

11 **SEC. 1301. RECOVERY BY SECRETARY OF VETERANS AF-** 12 **FAIRS.**

13 Title 38, United States Code, is amended by adding
 14 after part VI the following:

15 **“PART VII—RECOVERY OF COSTS** 16 **FOR TOBACCO-RELATED DIS-** 17 **ABILITY OR DEATH**

18 “CHAPTER 91—TORT LIABILITY FOR DISABILITY,
 19 INJURY, DISEASE, OR DEATH DUE TO TOBACCO USE

“Sec.

“9101. Recovery by Secretary of Veterans Affairs

“9102. Regulations

“9103. Limitation or repeal of other provisions for recovery of compensation

“9104. Exemption from annual limitation on damages

20 **“§ 9101. Recovery by Secretary of Veterans Affairs**

21 “(a) CONDITIONS; EXCEPTIONS; PERSONS LIABLE;
 22 AMOUNT OF RECOVERY; SUBROGATION.—In any case in

1 which the Secretary is authorized or required by law to
2 provide compensation and medical care services under this
3 title for disability or death from injury or disease attrib-
4 utable in whole or in part to the use of tobacco products
5 by a veteran during the veterans active military, naval,
6 or air service under circumstances creating a tort liability
7 upon a tobacco product manufacturer (other than or in
8 addition to the United States) to pay damages therefor,
9 the Secretary shall have a right to recover (independent
10 of the rights of the injured or diseased veteran) from said
11 tobacco product manufacturer the cost of the compensa-
12 tion paid or to be paid and the costs of medical care serv-
13 ices provided, and shall, as to this right, be subrogated
14 to any right or claim that the injured or diseased veteran,
15 his or her guardian, personal representative, estate, de-
16 pendants, or survivors has against such third person to
17 the extent of the cost of the compensation paid or to be
18 paid and the costs of medical services provided.

19 “(b) ENFORCEMENT PROCEDURE; INTERVENTION;
20 JOINDER OF PARTIES; STATE OR FEDERAL COURT PRO-
21 CEEDINGS.—The Secretary may, to enforce such right
22 under subsection (a) of this section—

23 “(1) intervene or join in any action or proceed-
24 ing brought by the injured or diseased veteran, his
25 or her guardian, personal representative, estate, de-

1 pendents, or survivors, against the tobacco product
2 manufacturer who is liable for the injury or disease;
3 or

4 “(2) if such action or proceeding is not com-
5 menced within 6 months after the first day on which
6 compensation is paid, or the medical care services
7 are provided, by the Secretary in connection with the
8 injury or disease involved, institute and prosecute
9 legal proceedings against the tobacco product manu-
10 facturer who is liable for the injury or disease, in a
11 State or Federal court, either alone (in its own name
12 or in the name of the injured veteran, his or her
13 guardian, personal representative, estate, depend-
14 ents, or survivors) or in conjunction with the injured
15 or diseased veteran, his or her guardian, personal
16 representative, estate, dependents, or survivors.

17 “(c) CREDITS TO APPROPRIATIONS.—Any amount re-
18 covered or collected under this section for compensation
19 paid, and medical care services provided, by the Secretary
20 shall be credited to a revolving fund established in the
21 Treasury of the United States known as the Department
22 of Veterans Affairs Tobacco Recovery Fund (hereafter
23 called the Fund). The Fund shall be available to the Sec-
24 retary without fiscal year limitation for purposes of veter-
25 ans programs, including administrative costs. The Sec-

1 retary may transfer such funds as deemed necessary to
 2 the various Department of Veterans Affairs appropria-
 3 tions, which shall remain available until expended.

4 **“§ 9102. Regulations**

5 “(a) DETERMINATION AND ESTABLISHMENT OF
 6 PRESENT VALUE OF COMPENSATION AND MEDICAL CARE
 7 SERVICES TO BE PAID.—The Secretary may prescribe
 8 regulations to carry out this chapter, including regulations
 9 with respect to the determination and establishment of the
 10 present value of compensation to be paid to an injured
 11 or diseased veteran or his or her surviving spouse, child,
 12 or parent, and medical care services provided to a veteran.

13 “(b) SETTLEMENT, RELEASE AND WAIVER OF
 14 CLAIMS.—To the extent prescribed by regulations under
 15 subsection (a) of this section, the Secretary may—

16 “(1) compromise, or settle and execute a release
 17 of, any claim which the Secretary has by virtue of
 18 the right established by section 9101 of this title; or

19 “(2) waive any such claim, in whole or in part,
 20 for the convenience of the Government, or if he or
 21 she determines that collection would result in undue
 22 hardship upon the veteran who suffered the injury
 23 or disease or his or her surviving spouse, child or
 24 parent resulting in payment of compensation, or re-
 25 ceipt of medical care services.

1 “(c) DAMAGES RECOVERABLE FOR PERSONAL IN-
2 JURY UNAFFECTED.—No action taken by the Secretary
3 in connection with the rights afforded under this chapter
4 shall operate to deny to the injured veteran or his or her
5 surviving spouse, child or parent the recovery for that por-
6 tion of his or her damage not covered hereunder.

7 **“§ 9103. Limitation or repeal of other provisions for**
8 **recovery of compensation and medical**
9 **care services**

10 “This chapter does not limit or repeal any other pro-
11 vision of law providing for recovery by the Secretary of
12 the cost of compensation and medical care services de-
13 scribed in section 9101 of this title.

14 **“§ 9104. Exemption from annual limitation on dam-**
15 **ages**

16 “Any amount recovered under section 9101 of this
17 title for compensation paid or to be paid, and the cost
18 of medical care services provided, by the Secretary for dis-
19 ability or death from injury or disease attributable in
20 whole or in part to the use of tobacco products by a vet-
21 eran during the veterans active military, naval, or air serv-
22 ice shall not be subject to the limitation on the annual
23 amount of damages for which the tobacco product manu-
24 facturers may be found liable as provided in the National
25 Tobacco Policy and Youth Smoking Reduction Act and

1 shall not be counted in computing the annual amount of
 2 damages for purposes of that section.”.

3 **TITLE XIV—EXCHANGE OF BENE-**
 4 **FITS FOR AGREEMENT TO**
 5 **TAKE ADDITIONAL MEAS-**
 6 **URES TO REDUCE YOUTH**
 7 **SMOKING**

8 **SEC. 1401. CONFERRAL OF BENEFITS ON PARTICIPATING**
 9 **TOBACCO PRODUCT MANUFACTURERS IN RE-**
 10 **TURN FOR THEIR ASSUMPTION OF SPECIFIC**
 11 **OBLIGATIONS.**

12 Participating tobacco product manufacturers shall re-
 13 ceive the benefits, and assume the obligations, set forth
 14 in this title.

15 **SEC. 1402. PARTICIPATING TOBACCO PRODUCT MANUFAC-**
 16 **TURER.**

17 (a) IN GENERAL.—Except as provided in subsection
 18 (b), a tobacco product manufacturer that—

19 (1) executes a protocol with the Secretary of
 20 Health and Human Services that meets the require-
 21 ments of sections 1403, 1404, and 1405; and

22 (2) makes the payment required under section
 23 402(a)(1),

24 is, for purposes of this title, a participating tobacco prod-
 25 ucts manufacturer.

1 (b) DISQUALIFICATION.—

2 (1) INELIGIBILITY.—Notwithstanding sub-
3 section (a), a tobacco product manufacturer may not
4 become a participating tobacco products manufac-
5 turer if—

6 (A) the tobacco product manufacturer or
7 any of its principal officers (acting in that offi-
8 cial's corporate capacity), is convicted of—

9 (i) manufacturing or distributing mis-
10 branded tobacco products in violation of
11 the criminal prohibitions on such mis-
12 branding established under section 301 or
13 303 of the Federal Food, Drug, and Cos-
14 metic Act (21 U.S.C. 331 or 333);

15 (ii) violating reporting requirements
16 established under section 5762(a)(4) of the
17 Internal Revenue Code of 1986 (26 U.S.C.
18 5762(a)(4));

19 (iii) violating, or aiding and abetting
20 the violation of chapter 114 of title 18,
21 United States Code; or

22 (iv) violating Federal prohibitions on
23 mail fraud, wire fraud, or the making of
24 false statements to Federal officials in the

1 course of making reports or disclosures re-
2 quired by this Act; or

3 (B) the tobacco product manufacturer, at
4 the end of the 1-year period beginning on the
5 date on which such manufacturer fails to make
6 a required assessment payment under title IV
7 of this Act, has not fully made such payment.

8 (2) DISQUALIFICATION.—A tobacco product
9 manufacturer that has become a participating to-
10 bacco product manufacturer shall cease to be treated
11 as a participating tobacco product manufacturer if—

12 (A) it, or any of its principal officers (act-
13 ing in that official's corporate capacity) is con-
14 victed of an offense described in paragraph
15 (1)(A); or

16 (B) it fails to make such a payment within
17 the time period described in paragraph (1)(B).

18 (c) NON-PARTICIPATING TOBACCO MANUFACTUR-
19 ERS.—Any tobacco product manufacturer that—

20 (1) does not execute a protocol in accordance
21 with subsection (a);

22 (2) fails to make the payment required by sec-
23 tion 402(a)(1) (if applicable to that manufacturer);

1 (3) is not eligible, under subsection (b)(1), to
2 become a participating tobacco product manufac-
3 turer; or

4 (4) ceases to be treated as a participating to-
5 bacco product manufacturer under subsection (b)(2),
6 is, for purposes of this title, a non-participating tobacco
7 product manufacturer.

8 **SEC. 1403. GENERAL PROVISIONS OF PROTOCOL.**

9 (a) IN GENERAL.—For purposes of section 1402, a
10 protocol meets the requirements of this section if it—

11 (1) contains the provisions described in sub-
12 section (b); and

13 (2) is enforceable at law.

14 (b) REQUIRED PROVISIONS.—The protocol shall in-
15 clude the following provisions:

16 (1) The tobacco product manufacturer execut-
17 ing the protocol will not engage in any conduct that
18 was, either on the date of enactment of this Act, or
19 at any time after the date of enactment of this
20 Act—

21 (A) prohibited by this Act;

22 (B) prohibited by any regulation promul-
23 gated by the Food and Drug Administration
24 that applies to tobacco products; or

25 (C) prohibited by any other statute.

1 (2) The tobacco product manufacturer execut-
2 ing the protocol will contract with only such dis-
3 tributors and retailers who have operated in compli-
4 ance with the applicable provisions of Federal, State,
5 or local law regarding the marketing and sale of to-
6 bacco products and who agree to comply with adver-
7 tising and marketing provisions in paragraph (3).

8 (3) The tobacco product manufacturer execut-
9 ing the protocol will be bound in marketing tobacco
10 products by the following provisions, whether or not
11 these provisions have legal force and effect against
12 manufacturers who are not signatories to the proto-
13 col—

14 (A) the advertising and marketing provi-
15 sions of part 897 of title 21, Code of Federal
16 Regulations, that were published in the Federal
17 Register on August 28, 1996, and which shall
18 be adopted and incorporated as independent
19 terms of the protocol;

20 (B) the requirements of section 1404; and

21 (C) the requirements of section 1405.

22 (4) The tobacco product manufacturer execut-
23 ing the protocol will make any payments to the Na-
24 tional Tobacco Trust Fund in title IV that are re-

1 quired to be made under that title or in any other
2 title of this Act.

3 (5) The tobacco product manufacturer execut-
4 ing the protocol will be bound by the provisions of
5 title IV, and any other title of this Act with respect
6 to payments required under title IV, without regard
7 to whether those provisions have legal force and ef-
8 fect against manufacturers who have not become sig-
9 natories.

10 (6) The tobacco product manufacturer execut-
11 ing the protocol will make the industry-wide and
12 manufacturer-specific look-back assessment pay-
13 ments that may be required under title II.

14 (7) The tobacco product manufacturer execut-
15 ing the protocol will be bound by the provisions of
16 title II that require a manufacturer to make look-
17 back assessments, and any other title of this Act
18 with respect to such assessments, without regard to
19 whether such terms have legal force and effect
20 against manufacturers who have not become signato-
21 ries.

22 (8) The tobacco product manufacturer execut-
23 ing the protocol will, within 180 days after the date
24 of enactment of this Act and in conjunction with
25 other participating tobacco product manufacturers,

1 establish a National Tobacco Document Depository
2 in the Washington, D.C. area—

3 (A) that is not affiliated with, or controlled
4 by, any tobacco product manufacturer;

5 (B) the establishment and operational
6 costs of which are allocated among participating
7 tobacco product manufacturers; and

8 (C) that will make any document submit-
9 ted to it under title IX of this Act and finally
10 determined not to be subject to attorney-client
11 privilege, attorney work product, or trade secret
12 exclusions, available to the public using the
13 Internet or other means within 30 days after
14 receiving the document.

15 (c) PROVISIONS APPLICABLE TO DOCUMENTS.—The
16 provisions of section 2116(a) and (b) of title 44, United
17 States Code, apply to records and documents submitted
18 to the Depository (or, to the alternative depository, if any,
19 established by the Secretary by regulation under title IX
20 of this Act) in the same manner and to the same extent
21 as if they were records submitted to the National Archives
22 of the United States required by statute to be retained
23 indefinitely.

1 **SEC. 1404. TOBACCO PRODUCT LABELING AND ADVERTIS-**
2 **ING REQUIREMENTS OF PROTOCOL.**

3 (a) IN GENERAL.—For purposes of section 1402, a
4 protocol meets the requirements of this section if it re-
5 quires that—

6 (1) no tobacco product will be sold or distrib-
7 uted in the United States unless its advertising and
8 labeling (including the package)—

9 (A) contain no human image, animal
10 image, or cartoon character;

11 (B) are not outdoor advertising, including
12 advertising in enclosed stadia and on mass
13 transit vehicles, and advertising from within a
14 retail establishment that is directed toward or
15 visible from the outside of the establishment;

16 (C) at the time the advertising or labeling
17 is first used are submitted to the Secretary so
18 that the Secretary may conduct regular review
19 of the advertising and labeling;

20 (D) comply with any applicable require-
21 ment of the Federal Food, Drug, and Cosmetic
22 Act, the Federal Cigarette Labeling and Adver-
23 tising Act, and any regulation promulgated
24 under either of those Acts;

25 (E) do not appear on the international
26 computer network of both Federal and non-

1 Federal interoperable packet switches data net-
2 works (the “Internet”), unless such advertising
3 is designed to be inaccessible in or from the
4 United States to all individuals under the age
5 of 18 years;

6 (F) use only black text on white back-
7 ground, other than—

8 (i) those locations other than retail
9 stores where no person under the age of 18
10 is permitted or present at any time, if the
11 advertising is not visible from outside the
12 establishment and is affixed to a wall or
13 fixture in the establishment; and

14 (ii) advertisements appearing in any
15 publication which the tobacco product
16 manufacturer, distributor, or retailer dem-
17 onstrates to the Secretary is a newspaper,
18 magazine, periodical, or other publication
19 whose readers under the age of 18 years
20 constitute 15 percent or less of the total
21 readership as measured by competent and
22 reliable survey evidence, and that is read
23 by less than 2 million persons under the
24 age of 18 years as measured by competent
25 and reliable survey evidence;

1 (G) for video formats, use only static black
2 text on a white background, and any accom-
3 panying audio uses only words without music or
4 sound effects;

5 (8) for audio formats, use only words with-
6 out music or sound effects;

7 (2) if a logo, symbol, motto, selling message,
8 recognizable color or pattern of colors, or any other
9 indicia of brand-name product identification of the
10 tobacco product is contained in a movie, program, or
11 video game for which a direct or indirect payment
12 has been made to ensure its placement;

13 (3) if a direct or indirect payment has been
14 made by any tobacco product manufacturer, dis-
15 tributor, or retailer to any entity for the purpose of
16 promoting use of the tobacco product through print
17 or film media that appeals to individuals under the
18 age of 18 years or through a live performance by an
19 entertainment artist that appeals to such individ-
20 uals;

21 (4) if a logo, symbol, motto, selling message,
22 recognizable color or pattern of colors, or any other
23 indicia or product identification identical to, similar
24 to, or identifiable with the tobacco product is used
25 for any item (other than a tobacco product) or serv-

1 ice marketed, licensed, distributed or sold or caused
2 to be marketed, licensed, distributed, or sold by the
3 tobacco product manufacturer or distributor of the
4 tobacco product; and

5 (5)(A) except as provided in subparagraph (B),
6 if advertising or labeling for such product that is
7 otherwise in accordance with the requirements of
8 this section bears a tobacco product brand name
9 (alone or in conjunction with any other word) or any
10 other indicia of tobacco product identification and is
11 disseminated in a medium other than newspapers,
12 magazines, periodicals or other publications (whether
13 periodic or limited distribution), nonpoint-of-sale
14 promotional material (including direct mail), point-
15 of-sale promotional material, or audio or video for-
16 mats delivered at a point-of-sale; but

17 (B) notwithstanding subparagraph (A), adver-
18 tising or labeling for cigarettes or smokeless tobacco
19 may be disseminated in a medium that is not speci-
20 fied in paragraph (1) if the tobacco product manu-
21 facturer, distributor, or retailer notifies the Sec-
22 retary not later than 30 days prior to the use of
23 such medium, and the notice describes the medium
24 and the extent to which the advertising or labeling
25 may be seen by persons under the age of 18 years.

1 (b) COLOR PRINT ADS ON MAGAZINES.—The proto-
2 col shall also provide that no tobacco product may be sold
3 or distributed in the United States if any advertising for
4 that product on the outside back cover of a magazine ap-
5 pears in any color or combination of colors.

6 **SEC. 1405. POINT-OF-SALE REQUIREMENTS.**

7 (a) IN GENERAL.—For purposes of section 1402, a
8 protocol meets the requirements of this section if it pro-
9 vides that, except as provided in subsection (b), point-of-
10 sale advertising of any tobacco product in any retail estab-
11 lishment is prohibited.

12 (b) PERMITTED POS LOCATIONS.—

13 (1) PLACEMENT.—One point-of-sale advertise-
14 ment may be placed in or at each retail establish-
15 ment for its brand or the contracted house retailer
16 or private label brand of its wholesaler.

17 (2) SIZE.—The display area of any such point-
18 of-sale advertisement (either individually or in the
19 aggregate) shall not be larger than 576 square
20 inches and shall consist of black letters on white
21 background or another recognized typography.

22 (3) PROXIMITY TO CANDY.—Any such point-of-
23 sale advertisement shall not be attached to or lo-
24 cated within 2 feet of any display fixture on which
25 candy is displayed for sale.

1 (c) AUDIO OR VIDEO.—Any audio or video format
2 permitted under regulations promulgated by the Secretary
3 may be played or shown in, but not distributed, at any
4 location where tobacco products are offered for sale.

5 (d) NO RESTRICTIVE COVENANTS.—No tobacco
6 product manufacturer or distributor of tobacco products
7 may enter into any arrangement with a retailer that limits
8 the retailer’s ability to display any form of advertising or
9 promotional material originating with another supplier
10 and permitted by law to be displayed in a retail establish-
11 ment.

12 (e) DEFINITIONS.—As used in this section, the terms
13 “point-of-sale advertisement” and “point-of-sale advertis-
14 ing” mean all printed or graphical materials (other than
15 a pack, box, carton, or container of any kind in which ciga-
16 rettes or smokeless tobacco is offered for sale, sold, or oth-
17 erwise distributed to consumers) bearing the brand name
18 (alone or in conjunction with any other word), logo, sym-
19 bol, motto, selling message, or any other indicia of product
20 identification identical or similar to, or identifiable with,
21 those used for any brand of cigarettes or smokeless to-
22 bacco, which, when used for its intended purpose, can rea-
23 sonably be anticipated to be seen by customers at a loca-
24 tion where tobacco products are offered for sale.

1 **SEC. 1406. APPLICATION OF TITLE.**

2 (a) IN GENERAL.—The provisions of this title apply
3 to any civil action involving a tobacco claim brought pur-
4 suant to title VII of this Act, including any such claim
5 that has not reached final judgment or final settlement
6 as of the date of enactment of this Act, only if such claim
7 is brought or maintained against—

8 (1) a participating tobacco product manufac-
9 turer or its predecessors;

10 (2) an importer, distributor, wholesaler, or re-
11 tailer of tobacco products—

12 (A) that, after the date of enactment of
13 this Act, does not import, distribute, or sell to-
14 bacco products made or sold by a non-partici-
15 pating tobacco manufacturer;

16 (B) whose business practices with respect
17 to sales or operations occurring within the
18 United States, conform to the applicable re-
19 quirements of the protocol; and

20 (C) that is not itself a non-participating
21 tobacco product manufacturer;

22 (3) a supplier of component or constituent parts
23 of tobacco products—

24 (A) whose business practices with respect
25 to sales or operations occurring within the

1 United States, conform to the applicable re-
2 quirements of the protocol; and

3 (B) that is not itself a non-participating
4 tobacco product manufacturer;

5 (4) a grower of tobacco products, unless such
6 person is itself a non-participating tobacco product
7 manufacturer; or

8 (5) an insurer of any person described in para-
9 graph (1), (2), (3), or (4) based on, arising out of,
10 or related to tobacco products manufactured, im-
11 ported, distributed, or sold (or tobacco grown) by
12 such person (other than an action brought by the in-
13 sured person), unless such insurer is itself a non-
14 participating tobacco product manufacturer.

15 (b) EXCEPTIONS.—The provisions of this title shall
16 not apply to any tobacco claim—

17 (1) brought against any person other than
18 those described in subsection (a) or to any tobacco
19 claim that reached final judgment or final settlement
20 prior to the date of enactment of this Act;

21 (2) against an employer under valid workers'
22 compensation laws;

23 (3) arising under the securities laws of a State
24 or the United State;

25 (4) brought by the United States;

1 (5) brought under this title by a State or a par-
 2 ticipating tobacco product manufacturer to enforce
 3 this Act;

4 (6) asserting damage to the environment from
 5 exposures other than environmental smoke or sec-
 6 ond-hand smoke; or

7 (7) brought against a supplier of a component
 8 or constituent part of a tobacco product, if the com-
 9 ponent or constituent part was sold after the date of
 10 enactment of this Act, and the supplier knew that
 11 the tobacco product giving rise to the claim would be
 12 manufactured in the United States by a nonpartici-
 13 pating tobacco product manufacturer.

14 **SEC. 1407. GOVERNMENTAL CLAIMS.**

15 (a) IN GENERAL.—Except as provided in subsection
 16 (b) and (c), no State, political subdivision of a State, mu-
 17 nicipal corporation, governmental entity or corporation,
 18 Indian tribe, or agency or subdivision thereof, or other en-
 19 tity acting in *parens patriae*, may file or maintain any civil
 20 action involving a tobacco claim against a participating to-
 21 bacco product manufacturer.

22 (b) EFFECT ON EXISTING STATE SUITS OF SETTLE-
 23 MENT AGREEMENT OR CONSENT DECREE.—Within 30
 24 days after the date of enactment of this Act, any State
 25 that has filed a civil action involving a tobacco claim

1 against a participating tobacco product manufacturer may
2 elect to settle such action against said tobacco product
3 manufacturer. If a State makes such an election to enter
4 into a settlement or a consent decree, it may maintain a
5 civil action involving a tobacco claim only to the extent
6 necessary to permit continuing court jurisdiction over the
7 settlement or consent decree. Nothing herein shall pre-
8 clude any State from bringing suit or seeking a court
9 order to enforce the terms of such settlement or decree.

10 (c) STATE OPTION FOR ONE-TIME OPT OUT.—Any
11 State that does not make the election described in sub-
12 section (b) may continue its lawsuit, notwithstanding sub-
13 section (a) of this section. A State that does not make
14 such an election shall not be eligible to receive payments
15 from the trust fund in title IV.

16 (d) 30-DAY DELAY.—No settlement or consent de-
17 cree entered into under subsection (b) may take effect
18 until 30 days after the date of enactment of this Act.

19 (f) PRESERVATION OF INSURANCE CLAIMS.—

20 (1) IN GENERAL.—If all participating tobacco
21 product manufacturers fail to make the payments
22 required by title IV for any calendar year, then—

23 (A) beginning on the first day of the next
24 calendar year, subsection (a) does not apply to
25 any insurance claim (including a direct action

1 claim) that is a tobacco claim, regardless of
2 when that claim arose;

3 (B) any statute of limitations or doctrine
4 of laches under applicable law shall be tolled for
5 the period—

6 (i) beginning on the date of enactment
7 of this Act; and

8 (ii) ending on the last day of that cal-
9 endar year; and

10 (C) an insurance claim (including a direct
11 action claim) that is a tobacco claim and that
12 is pending on the date of enactment of this Act
13 shall be preserved.

14 (2) APPLICATION OF TITLE 11, UNITED STATES
15 CODE.—For purposes of this subsection, nothing in
16 this Act shall be construed to modify, suspend, or
17 otherwise affect the application of title 11, United
18 States Code, to participating tobacco manufacturers
19 that fail to make such payments.

20 (3) STATE LAW NOT AFFECTED.—Nothing in
21 this subsection shall be construed to expand or
22 abridge State law.

1 **SEC. 1408. ADDICTION AND DEPENDENCY CLAIMS;**
2 **CASTANO CIVIL ACTIONS.**

3 (a) ADDICTION AND DEPENDENCE CLAIMS
4 BARRED.—In any civil action to which this title applies,
5 no addiction claim or dependence claim may be filed or
6 maintained against a participating tobacco product manu-
7 facturer.

8 (b) CASTANO CIVIL ACTIONS.—

9 (1) The rights and benefits afforded in this Act,
10 and the various research activities envisioned by this
11 Act, are provided in settlement of, and shall con-
12 stitute the exclusive remedy for the purpose of deter-
13 mining civil liability as to those claims asserted in
14 the Castano Civil Actions, and all bases for any such
15 claim under the laws of any State are preempted
16 (including State substantive, procedural, remedial,
17 and evidentiary provisions) and settled. The Castano
18 Civil Actions shall be dismissed with full reservation
19 of the rights of individual class members to pursue
20 claims not based on addiction or dependency in civil
21 actions, as defined in section 1417(2), in accordance
22 with this Act. For purposes of determining applica-
23 tion of statutes of limitation or repose, individual ac-
24 tions filed within one year after the effective date of
25 this Act by those who were included within a
26 Castano Civil Action shall be considered to have

1 been filed as of the date of the Castano Civil Action
2 applicable to said individual.

3 (2) For purposes of awarding attorneys fees
4 and expenses for those actions subject to this sub-
5 section, the matter at issue shall be submitted to ar-
6 bitration before one panel of arbitrators. In any such
7 arbitration, the arbitration panel shall consist of 3
8 persons, one of whom shall be chosen by the attor-
9 neys of the Castano Plaintiffs' Litigation Committee
10 who were signatories to the Memorandum of Under-
11 standing dated June 20, 1997, by and between to-
12 bacco product manufacturers, the Attorneys General,
13 and private attorneys, one of whom shall be chosen
14 by the participating tobacco product manufacturers,
15 and one of whom shall be chosen jointly by those 2
16 arbitrators.

17 (3) The participating tobacco product manufac-
18 turers shall pay the arbitration award.

19 **SEC. 1409. SUBSTANTIAL NON-ATTAINMENT OF REQUIRED**
20 **REDUCTIONS.**

21 (a) ACTION BY SECRETARY.—If the Secretary deter-
22 mines under title II that the non-attainment percentage
23 for any year is greater than 20 percentage points for ciga-
24 rettes or smokeless tobacco, then the Secretary shall deter-
25 mine, on a brand-by-brand basis, using data that reflects

1 a 1999 baseline, which tobacco product manufacturers are
2 responsible within the 2 categories of tobacco products for
3 the excess. The Secretary may commence an action under
4 this section against the tobacco product manufacturer or
5 manufacturers of the brand or brands of cigarettes or
6 smokeless tobacco products for which the non-attainment
7 percentage exceeded 20 percentage points.

8 (b) PROCEDURES.—Any action under this section
9 shall be commenced by the Secretary in the United States
10 District Court for the District of Columbia within 90 days
11 after publication in the Federal Register of the determina-
12 tion that the non-attainment percentage for the tobacco
13 product in question is greater than 20 percentage points.
14 Any such action shall be heard and determined by a 3-
15 judge court under section 2284 of title 28, United States
16 Code.

17 (c) DETERMINATION BY COURT.—In any action
18 under this section, the court shall determine whether a
19 tobacco product manufacturer has shown, by a preponder-
20 ance of the evidence that it—

21 (1) has complied substantially with the provi-
22 sions of this Act regarding underage tobacco use, of
23 any rules or regulations promulgated thereunder, or
24 of any Federal or State laws regarding underage to-
25 bacco use;

1 (2) has not taken any material action to under-
2 mine the achievement of the required percentage re-
3 duction for the tobacco product in question; and

4 (3) has used its best efforts to reduce underage
5 tobacco use to a degree at least equal to the required
6 percentage reductions.

7 (d) REMOVAL OF ANNUAL AGGREGATE PAYMENT
8 LIMITATION.—Except as provided in subsections (e) and
9 (g), if the court determines that a tobacco product manu-
10 facturer has failed to make the showing described in sub-
11 section (c) then sections 1411 and 1412 of this Act do
12 not apply to the enforcement against, or the payment by,
13 such tobacco product manufacturer of any judgment or
14 settlement that becomes final after that determination is
15 made.

16 (e) DEFENSE.—An action under this section shall be
17 dismissed, and subsection (d) shall not apply, if the court
18 finds that the Secretary's determination under subsection
19 (a) was unlawful under subparagraph (A), (B), (C), or (D)
20 of section 706(2) of title 5, United States Code. Any judg-
21 ments paid under section 1412 of this Act prior to a final
22 judgment determining that the Secretary's determination
23 was erroneous shall be fully credited, with interest, under
24 section 1412 of this Act.

1 (f) REVIEW.—Decisions of the court under this sec-
2 tion are reviewable only by the Supreme Court by writ
3 of certiorari granted upon the petition of any party. The
4 applicability of subsection (d) shall be stayed during the
5 pendency of any such petition or review.

6 (g) CONTINUING EFFECT.—Subsection (d) shall
7 cease to apply to a tobacco product manufacturer found
8 to have engaged in conduct described in subsection (c)
9 upon the later of—

10 (1) a determination by the Secretary under sec-
11 tion 201 after the commencement of action under
12 subsection (a) that the non-attainment percentage
13 for the tobacco product in question is 20 or fewer
14 percentage points; or

15 (2) a finding by the court in an action filed
16 against the Secretary by the manufacturer, not ear-
17 lier than 2 years after the determination described
18 in subsection (c) becomes final, that the manufac-
19 turer has shown by a preponderance of the evidence
20 that, in the period since that determination, the
21 manufacturer—

22 (A) has complied with the provisions of
23 this Act regarding underage tobacco use, of any
24 rules or regulations promulgated thereunder,

1 and of any other applicable Federal, State, or
2 local laws, rules, or regulations;

3 (B) has not taken any action to undermine
4 the achievement of the required percentage re-
5 duction for the tobacco product in question; and

6 (C) has used its best efforts to attain the
7 required percentage reduction for the tobacco
8 product in question.

9 A judgment or settlement against the tobacco product
10 manufacturer that becomes final after a determination or
11 finding described in paragraph (1) or (2) of this sub-
12 section is not subject to subsection (d). An action under
13 paragraph (2) of this subsection shall be commenced in
14 the United States District Court for the District of Colum-
15 bia, and shall be heard and determined by a 3-judge court
16 under section 2284 of title 28, United States Code. A deci-
17 sion by the court under paragraph (2) of this subsection
18 is reviewable only by the Supreme Court by writ of certio-
19 rari granted upon the petition of any party, and the deci-
20 sion shall be stayed during the pendency of the petition
21 or review. A determination or finding described in para-
22 graph (1) or (2) of this subsection does not limit the Sec-
23 retary's authority to bring a subsequent action under this
24 section against any tobacco product manufacturer or the

1 applicability of subsection (d) with respect to any such
2 subsequent action.

3 **SEC. 1410. PUBLIC HEALTH EMERGENCY.**

4 If the Secretary, in consultation with the Commis-
5 sioner of Food and Drugs, the Surgeon General, the Di-
6 rector of the Center for Disease Control or the Director's
7 delegate, and the Director of the Health and Human Serv-
8 ices Office of Minority Health determines at any time that
9 a tobacco product manufacturer's actions or inactions with
10 respect to its compliance with the Act are of such a nature
11 as to create a clear and present danger that the manufac-
12 turer will not attain the targets for underage smoking re-
13 duction, the Secretary may bring an action under section
14 1409 seeking the immediate suspension of the tobacco
15 product manufacturer's annual limitation cap on civil
16 judgments. If the court determines that the Secretary has
17 proved by clear and convincing evidence that the subject
18 manufacturer's actions or inactions are of such a nature
19 that they present a clear and present danger that the man-
20 ufacturer will not attain the targets for underage smoking
21 reduction, the court may suspend the subject manufactur-
22 er's annual limitation cap on civil judgments.

1 **SEC. 1411. TOBACCO CLAIMS BROUGHT AGAINST PARTICI-**
2 **PATING TOBACCO PRODUCT MANUFACTUR-**
3 **ERS.**

4 (a) PERMISSIBLE DEFENDANTS.—In any civil action
5 to which this title applies, tobacco claims may be filed or
6 maintained only against—

7 (1) a participating tobacco product manufac-
8 turer; or

9 (2) a surviving entity established by a partici-
10 pating tobacco product manufacturer.

11 (b) ACTIONS INVOLVING PARTICIPATING AND NON-
12 PARTICIPATING MANUFACTURERS.—In any civil action in-
13 volving both a tobacco claim against a participating to-
14 bacco product manufacturer based in whole or in part
15 upon conduct occurring prior to the date of enactment of
16 this Act and a claim against 1 or more non-participating
17 tobacco product manufacturers, the court, upon applica-
18 tion of a participating tobacco product manufacturer, shall
19 require the jury to or shall itself apportion liability as be-
20 tween the participating tobacco product manufacturer and
21 non-participating tobacco product manufacturers.

22 **SEC. 1412. PAYMENT OF TOBACCO CLAIM SETTLEMENTS**
23 **AND JUDGMENTS.**

24 (a) IN GENERAL.—Except as provided in this section,
25 any judgment or settlement in any civil action to which
26 this subtitle applies shall be subject to the process for pay-

1 ment of judgments and settlements set forth in this sec-
2 tion. No participating tobacco product manufacturer shall
3 be obligated to pay a judgment or settlement on a tobacco
4 claim in any civil action to which this title applies except
5 in accordance with this section. This section shall not
6 apply to the portion, if any, of a judgment that imposes
7 punitive damages based on any conduct that—

8 (1) occurs after the date of enactment of this
9 Act; and

10 (2) is other than the manufacture, development,
11 advertising, marketing, or sale of tobacco products
12 in compliance with this Act and any agreement inci-
13 dent thereto.

14 (b) REGISTRATION WITH THE SECRETARY OF THE
15 TREASURY.—

16 (1) The Secretary shall maintain a record of
17 settlements, judgments, and payments in civil ac-
18 tions to which this title applies.

19 (2) Any party claiming entitlement to a mone-
20 etary payment under a final judgment or final settle-
21 ment on a tobacco claim shall register such claim
22 with the Secretary by filing a true and correct copy
23 of the final judgment or final settlement agreement
24 with the Secretary and providing a copy of such fil-

1 ing to all other parties to the judgment or settle-
2 ment.

3 (3) Any participating tobacco product manufac-
4 turer making a payment on any final judgment or
5 final settlement to which this section applies shall
6 certify such payment to the Secretary by filing a
7 true and correct copy of the proof of payment and
8 a statement of the remaining unpaid portion, if any,
9 of such final judgment or final settlement with the
10 Secretary and shall provide a copy of such filing to
11 all other parties to the judgment or settlement.

12 (c) LIABILITY CAP.—

13 (1) IN GENERAL.—The aggregate payments
14 made by all participating tobacco product manufac-
15 turers in any calendar year may not exceed
16 \$8,000,000,000.

17 (2) IMPLEMENTATION.—The Secretary shall
18 initiate a rulemaking within 30 days after the date
19 of enactment of this Act to establish a mechanism
20 for implementing this subsection in such a way to
21 ensure the fair and equitable payment of final judg-
22 ments or final settlements on tobacco claims under
23 this title. Amounts not payable because of the appli-
24 cation of this subsection, shall be carried forward

1 and paid in the next year, subject to the provisions
2 of this subsection.

3 (3) INFLATION ADJUSTMENT.—

4 (A) IN GENERAL.—The amount in para-
5 graph (1) shall be increased annually, beginning
6 with the second calendar year beginning after
7 the date of enactment of this Act, by the great-
8 er of 3 percent or the annual increase in the
9 CPI.

10 (B) CPI.—For purposes of subparagraph
11 (A), the CPI for any calendar year is the aver-
12 age of the Consumer Price Index for all-urban
13 consumers published by the Department of
14 Labor.

15 (C) ROUNDING.—If any increase deter-
16 mined under subparagraph (A) is not a multiple
17 of \$1,000, the increase shall be rounded to the
18 nearest multiple of \$1,000.

19 (d) INJUNCTIVE RELIEF.—A participating tobacco
20 product manufacturer may commence an action to enjoin
21 any State court proceeding to enforce or execute any judg-
22 ment or settlement where payment has not been author-
23 ized under this section. Such an action shall arise under
24 the laws of the United States and may be commenced in

1 the district court of the United States for the district in
2 which the State court proceeding is pending.

3 (e) JOINT AND SEVERAL LIABILITY.—All participat-
4 ing tobacco product manufacturers shall be jointly and
5 severally liable for, and shall enter into an agreement to
6 apportion among them, any amounts payable under judg-
7 ments and settlements governed by this section arising in
8 whole or in part from conduct occurring prior to the date
9 of enactment of this Act.

10 (f) BANKRUPTCY OF PARTICIPATING MANUFAC-
11 Turer.—No participating tobacco product manufacturer
12 shall cease operations without establishing a surviving en-
13 tity against which a tobacco claim may be brought. Any
14 obligation , interest, or debt of a participating, tobacco
15 product manufacturer arising under such liability appor-
16 tionment agreement shall be given priority and shall not
17 be rejected, avoided, discharged, or otherwise modified or
18 diminished in a proceeding, under title 11, United States
19 Code, or in any liquidation, reorganization, receivership,
20 or other insolvency proceeding under State law. A trustee
21 or receiver in any proceeding under title 11, United States
22 Code, or in liquidation, reorganization, receivership, or
23 other insolvency proceeding under State law, may avoid
24 any transfer of an interest of the participating tobacco
25 product manufacturer, or any obligation incurred by such

1 manufacturer, that was made or incurred on or within 2
 2 years before the date of the filing of a bankruptcy petition,
 3 if such manufacturer made such transfer or incurred such
 4 obligation to hinder or defeat in any fashion the payment
 5 of any obligation, interest, or debt of the manufacturer
 6 arising under the liability apportionment agreement. Any
 7 property vesting in the participating tobacco product man-
 8 ufacturer following such a proceeding shall be subject to
 9 all claims and interest of creditors arising under the liabil-
 10 ity apportionment agreement.

11 (f) LIMITATION ON STATE COURTS.—No court of any
 12 State, Tribe, or political subdivision of a State may take
 13 any action to inhibit the effective operation of subsection
 14 (c).

15 **SEC. 1413. ATTORNEYS' FEES AND EXPENSES.**

16 (a) ARBITRATION PANEL.—

17 (1) RIGHT TO ESTABLISH.—For the purpose of
 18 awarding of attorneys' fees and expenses relating to
 19 litigation affected by, or legal services that, in whole
 20 or in part, resulted in or created a model for pro-
 21 grams in, this Act, and with respect to which litiga-
 22 tion or services the attorney involved is unable to
 23 agree with the plaintiff who employed that attorney
 24 with respect to any dispute that may arise between
 25 them regarding the fee agreement, the matter at

1 issue shall be submitted to arbitration. In any such
2 arbitration, the arbitration panel shall consist of 3
3 persons, one of whom shall be chosen by the plain-
4 tiff, one of whom shall be chosen by the attorney,
5 and one of whom shall be chosen jointly by those 2
6 arbitrators.

7 (2) OPERATION.—Not later than 30 days after
8 the date on which all members of an arbitration
9 panel are appointed under paragraph (1), the panel
10 shall establish the procedures under which the panel
11 will operate which shall include—

12 (A) a requirement that any finding by the
13 arbitration panel must be in writing and sup-
14 ported by written reasons;

15 (B) procedures for the exchanging of ex-
16 hibits and witness lists by the various claimants
17 for awards;

18 (C) to the maximum extent practicable, re-
19 quirements that proceedings before the panel be
20 based on affidavits rather than live testimony;
21 and

22 (D) a requirement that all claims be sub-
23 mitted to an arbitration panel not later than 3
24 months after the date of this Act and a deter-
25 mination made by the panel with respect to

1 such claims not later than 7 months after such
2 date of enactment.

3 (3) RIGHT TO PETITION.—Any individual attor-
4 ney or group of attorneys involved in litigation af-
5 fected by this Act shall have the right to petition an
6 arbitration panel for attorneys' fees and expenses.

7 (4) CRITERIA.—In making any award under
8 this section, an arbitration panel shall consider the
9 following criteria:

10 (A) The time and labor required by the
11 claimant.

12 (B) The novelty and difficulty of the ques-
13 tions involved in the action for which the claim-
14 ant is making a claim.

15 (C) The skill requisite to perform the legal
16 service involved properly.

17 (D) The preclusion of other employment by
18 the attorney due to acceptance of the action in-
19 volved.

20 (E) Whether the fee is fixed or a percent-
21 age.

22 (F) Time limitations imposed by the client
23 or the circumstances.

24 (G) The amount involved and the results
25 obtained.

1 (H) The experience, reputation, and ability
2 of the attorneys involved.

3 (I) The undesirability of the action.

4 (J) Such other factors as justice may re-
5 quire.

6 (5) APPEAL AND ENFORCEMENT.—The findings
7 of an arbitration panel shall be final, binding, non-
8 appealable, and payable within 30 days after the
9 date on which the finding is made public, except that
10 if an award is to be paid in installments, the first
11 installment shall be payable within such 30 day pe-
12 riod and succeeding installments shall be paid annu-
13 ally thereafter.

14 (b) VALIDITY AND ENFORCEABILITY OF PRIVATE
15 AGREEMENTS.—Notwithstanding any other provision of
16 this Act, nothing in this section shall be construed to abro-
17 gate or restrict in any way the rights of any parties to
18 mediate, negotiate, or settle any fee or expense disputes
19 or issues to which this section applies, or to enter into
20 private agreements with respect to the allocation or divi-
21 sion of fees among the attorneys party to any such agree-
22 ment.

23 (c) OFFSET FOR AMOUNTS ALREADY PAID.—In
24 making a determination under this section with regard to
25 a dispute between a State that pursued independent civil

1 action against tobacco product manufacturers and its at-
2 torney, the arbitration panel shall take into account any
3 amounts already paid by the State under the agreement
4 in dispute.

5 **SEC. 1414. EFFECT OF COURT DECISIONS.**

6 (a) SEVERABILITY.—If any provision of titles I
7 through XIII, or the application thereof to any person,
8 manufacturer or circumstance, is held invalid, the remain-
9 der of the provisions of those titles, and the application
10 of such provision to other persons or circumstances, shall
11 not be affected thereby.

12 (b) NONSEVERABILITY.—If a court of competent ju-
13 risdiction enters a final decision substantially limiting or
14 impairing the essential elements of title XIV, specifically
15 the requirements of sections 1404 and 1405, then the pro-
16 visions of section 1412 are null and void and of no effect.

17 **SEC. 1415. CRIMINAL LAWS NOT AFFECTED.**

18 Nothing in this title shall be construed to limit the
19 criminal liability of tobacco product manufacturers, retail-
20 ers, or distributors or their directors, officers, employees,
21 successors, or assigns.

22 **SEC. 1416. CONGRESS RESERVES THE RIGHT TO ENACT**
23 **LAWS IN THE FUTURE.**

24 The right to alter, amend, or repeal any provision of
25 this Act is hereby reserved to the Congress in accordance

1 with the provisions of Article I of the Constitution of the
2 United States and more than 200 years of history.

3 **SEC. 1417. DEFINITIONS.**

4 In this title:

5 (1) TERMS DEFINED IN TITLE VII.—Any term
6 used in this title that is defined in title VII has the
7 meaning given to it in title VII.

8 (2) ADDITIONAL DEFINITIONS.—

9 (A) ADDICTION CLAIM; DEPENDENCE
10 CLAIM.—The term “addiction claim” or “de-
11 pendence claim” refers only to any cause of ac-
12 tion to the extent that the prayer for relief
13 seeks a cessation program, or other public
14 health program that is to be available to mem-
15 bers of the general public and is designed to re-
16 duce or eliminate the users’ addiction to, or de-
17 pendence on, tobacco products, and as used
18 herein is brought by those who claim the need
19 for nicotine reduction assistance. Neither addic-
20 tion or dependence claims include claims related
21 to or involving manifestation of illness or to-
22 bacco-related diseases.

23 (B) COMPENSATORY DAMAGES.—The term
24 “compensatory damages” refers to those dam-
25 ages necessary to reimburse an injured party,

1 and includes actual, general, and special dam-
2 ages.

3 (C) PROTOCOL.—The term “protocol”
4 means the agreement to be entered into by the
5 Secretary of Health and Human Services with
6 a participating tobacco product manufacturers
7 under this title.

8 (D) PUNITIVE DAMAGES.—The term “pu-
9 nitive damages” means damages in addition to
10 compensatory damages having the character of
11 punishment or penalty.

12 (E) SECRETARY.—The term “Secretary”
13 means the Secretary of the Treasury, except
14 where the context otherwise requires.

15 **TITLE XV—TOBACCO**
16 **TRANSITION**

17 **SEC. 1501. SHORT TITLE.**

18 This title may be cited as the “Tobacco Transition
19 Act”.

20 **SEC. 1502. PURPOSES.**

21 The purposes of this title are—

22 (1) to authorize the use of binding contracts be-
23 tween the United States and tobacco quota owners
24 and tobacco producers to compensate them for the

1 termination of Federal programs that support the
2 production of tobacco in the United States;

3 (2) to make available to States funds for eco-
4 nomic assistance initiatives in counties of States that
5 are dependent on the production of tobacco; and

6 (3) to terminate Federal programs that support
7 the production of tobacco in the United States.

8 **SEC. 1503. DEFINITIONS.**

9 In this title:

10 (1) ASSOCIATION.—The term “association”
11 means a producer-owned cooperative marketing asso-
12 ciation that has entered into a loan agreement with
13 the Commodity Credit Corporation to make price
14 support available to producers.

15 (2) BUYOUT PAYMENT.—The term “buyout
16 payment” means a payment made to a quota owner
17 under section 1514 for each of the 1999 through
18 2001 marketing years.

19 (3) CONTRACT.—The term “contract” or “to-
20 bacco transition contract” means a contract entered
21 into under section 1512.

22 (4) GOVERNOR.—The term “Governor” means
23 the chief executive officer of a State.

24 (5) LEASE.—The term “lease” means—

1 (A) the rental of quota on either a cash
2 rent or crop share basis;

3 (B) the rental of farmland to produce to-
4 bacco under a farm marketing quota; or

5 (C) the lease and transfer of quota for the
6 marketing of tobacco produced on the farm of
7 a lessor.

8 (6) MARKETING YEAR.—The term “marketing
9 year” means—

10 (A) in the case of Flue-cured tobacco, the
11 period beginning July 1 and ending the follow-
12 ing June 30; and

13 (B) in the case of each other kind of to-
14 bacco, the period beginning October 1 and end-
15 ing the following September 30.

16 (7) OWNER.—The term “owner” means a per-
17 son that, at the time of entering into a tobacco tran-
18 sition contract, owns quota provided by the Sec-
19 retary.

20 (8) PRICE SUPPORT.—The term “price sup-
21 port” means a nonrecourse loan provided by the
22 Commodity Credit Corporation through an associa-
23 tion for a kind of tobacco.

24 (9) PRODUCER.—The term “producer” means a
25 person that for each of the 1995 through 1997 crops

1 of tobacco (as determined by the Secretary) that
2 were subject to quota—

3 (A) leased quota or farmland;

4 (B) shared in the risk of producing a crop
5 of tobacco; and

6 (C) marketed the tobacco subject to quota.

7 (10) QUOTA.—The term “quota” means the
8 right to market tobacco under a basic marketing
9 quota or acreage allotment allotted to a person
10 under the Agricultural Adjustment Act of 1938 (7
11 U.S.C. 1281 et seq.).

12 (11) SECRETARY.—The term “Secretary”
13 means the Secretary of Agriculture.

14 (12) STATE.—The term “State” means each of
15 the several States of the United States, the District
16 of Columbia, the Commonwealth of Puerto Rico, and
17 any other territory or possession of the United
18 States.

19 (13) TOBACCO.—The term “tobacco” means
20 any kind of tobacco for which—

21 (A) a marketing quota is in effect;

22 (B) a marketing quota is not disapproved
23 by producers; or

24 (C) price support is available.

1 (14) TOBACCO PRODUCT MANUFACTURER.—
 2 The term “tobacco product manufacturer” has the
 3 meaning given the term “manufacturer of tobacco
 4 products” in section 5702 of the Internal Revenue
 5 Code of 1986.

6 (15) TRANSITION PAYMENT.—The term “tran-
 7 sition payment” means a payment made to a pro-
 8 ducer under section 1515 for each of the 1999
 9 through 2001 marketing years.

10 (16) TRUST FUND.—The term “Trust Fund”
 11 means the Tobacco Community Revitalization Trust
 12 Fund established by section 1511.

13 (17) UNITED STATES.—The term “United
 14 States”, when used in a geographical sense, means
 15 all of the States.

16 **Subtitle A—Tobacco Production**
 17 **Transition**

18 **CHAPTER 1—TOBACCO TRANSITION**

19 **CONTRACTS**

20 **SEC. 1511. TOBACCO COMMUNITY REVITALIZATION TRUST**
 21 **FUND.**

22 (a) ESTABLISHMENT.—There is established in the
 23 Treasury of the United States a trust fund to be known
 24 as the “Tobacco Community Revitalization Trust Fund”,

1 consisting of amounts paid into the Trust Fund under
2 subsection (d).

3 (b) ADMINISTRATION.—The Trust Fund shall be ad-
4 ministered by the Secretary of the Treasury.

5 (c) USE.—Funds in the Trust Fund shall be available
6 for making—

7 (1) buyout payments;

8 (2) transition payments; and

9 (3) rural economic assistance block grants
10 under section 1521.

11 (d) TRANSFER FROM NATIONAL TOBACCO SETTLE-
12 MENT TRUST FUND.—The Secretary of the Treasury shall
13 transfer from the National Tobacco Settlement Trust
14 Fund to the Trust Fund such amounts as the Secretary
15 of Agriculture determines are necessary to carry out this
16 title.

17 (e) TERMINATION.—The Trust Fund shall terminate
18 effective September 30, 2003.

19 **SEC. 1512. OFFER AND TERMS OF TOBACCO TRANSITION**
20 **CONTRACTS.**

21 (a) OFFER.—The Secretary shall offer to enter into
22 a tobacco transition contract with each owner and pro-
23 ducer.

24 (b) TERMS.—

1 (1) OWNERS.—In exchange for a payment
2 made under section 1514, an owner shall agree to
3 relinquish the quota owned by the owner.

4 (2) PRODUCERS.—In exchange for a payment
5 made under section 1515, a producer shall agree to
6 relinquish the value of the quota leased by the pro-
7 ducer.

8 (c) RIGHT TO GROW TOBACCO.—Each owner or pro-
9 ducer that enters into a contract shall have the right to
10 continue the production of tobacco for each of the 1999
11 and subsequent crops of tobacco.

12 **SEC. 1513. ELEMENTS OF CONTRACTS.**

13 (a) DEADLINES FOR CONTRACTING.—

14 (1) COMMENCEMENT.—To the maximum extent
15 practicable, the Secretary shall commence entering
16 into contracts under this chapter not later than 90
17 days after the date of enactment of this Act.

18 (2) DEADLINE.—The Secretary may not enter
19 into a contract under this chapter after June 30,
20 1999.

21 (b) DURATION OF CONTRACT.—The term of a con-
22 tract shall—

23 (1) begin on the date that is the beginning of
24 the 1999 marketing year for a kind of tobacco; and

1 (2) terminate on the date that is the end of the
2 2001 marketing year for the kind of tobacco.

3 (c) TIME FOR PAYMENT.—A buyout payment or
4 transition payment shall be made not later than the date
5 that is the beginning of the marketing year for a kind of
6 tobacco for each year of the term of a tobacco transition
7 contract of an owner or producer.

8 **SEC. 1514. BUYOUT PAYMENTS TO OWNERS.**

9 (a) IN GENERAL.—The Secretary shall make buyout
10 payments in 3 equal installments, 1 installment for each
11 of the 1999 through 2001 marketing years for each kind
12 of tobacco involved, to an owner that owns quota at the
13 time of entering into a tobacco transition contract.

14 (b) COMPENSATION FOR LOST VALUE.—The pay-
15 ment shall constitute compensation for the lost value to
16 the owner of the quota.

17 (c) PAYMENT CALCULATION.—Under this section,
18 the total amount of the buyout payment made to an owner
19 shall be determined by multiplying—

20 (1) \$8.00; by

21 (2) the average annual quantity of quota owned
22 by the owner during the 1995 through 1997 crop
23 years.

1 **SEC. 1515. TRANSITION PAYMENTS TO PRODUCERS.**

2 (a) IN GENERAL.—The Secretary shall make transi-
3 tion payments in 3 equal installments, 1 installment for
4 each of the 1999 through 2001 marketing years for each
5 kind of tobacco produced, to a producer that—

6 (1) produced the kind of tobacco for each of the
7 1995 through 1997 crops; and

8 (2) entered into a tobacco transition contract.

9 (b) TRANSITION PAYMENTS LIMITED TO LEASED
10 QUOTA.—A producer shall be eligible for transition pay-
11 ments only for the portion of the production of the pro-
12 ducer that is subject to quota that is leased (as defined
13 in section 1503(5) of this Act) during the 3 crop years
14 described in subsection (a)(1).

15 (c) COMPENSATION FOR LOST REVENUE.—The pay-
16 ments shall constitute compensation for the lost revenue
17 incurred by a tobacco producer for a kind of tobacco.

18 (d) PRODUCTION HISTORY; PRODUCTION.—

19 (1) PRODUCTION HISTORY.—The Secretary
20 shall base a transition payment made to a producer
21 on the average quantity of tobacco subject to a mar-
22 keting quota that is produced by the producer for
23 each of the 1995 through 1997 crops.

24 (2) PRODUCTION.—The producer shall have the
25 burden of demonstrating to the Secretary the pro-

1 duction of tobacco for each of the 1995 through
2 1997 crops.

3 (e) PAYMENT CALCULATION.—Under this section,
4 the total amount of the transition payment made to a pro-
5 ducer shall be determined by multiplying—

6 (1) \$4.00; by

7 (2) the average quantity of the kind of tobacco
8 produced by the producer for each of the 1995
9 through 1997 crops.

10 **CHAPTER 2—RURAL ECONOMIC**
11 **ASSISTANCE BLOCK GRANTS**

12 **SEC. 1521. RURAL ECONOMIC ASSISTANCE BLOCK GRANTS.**

13 (a) IN GENERAL.—From funds transferred from the
14 Trust Fund, the Secretary shall use \$200,000,000 for
15 each of fiscal years 1999 through 2003 to provide block
16 grants to tobacco-growing States to assist areas of such
17 a State that are economically dependent on the production
18 of tobacco.

19 (b) PAYMENTS BY SECRETARY TO TOBACCO-GROW-
20 ING STATES.—

21 (1) IN GENERAL.—The Secretary shall use the
22 amount available for a fiscal year under subsection
23 (a) to make block grant payments to the Governors
24 of tobacco-growing States.

1 (2) AMOUNT.—The amount of a block grant
2 paid to a tobacco-growing State shall be based on,
3 as determined by the Secretary—

4 (A) the number of counties in the State in
5 which tobacco production is a significant part of
6 the county's economy; and

7 (B) the level of economic dependence of
8 the counties on tobacco production.

9 (c) GRANTS BY STATES TO ASSIST TOBACCO-GROW-
10 ING AREAS.—

11 (1) IN GENERAL.—A Governor of a tobacco-
12 growing State shall use the amount of the block
13 grant to the State under subsection (b) to make
14 grants to counties or other public or private entities
15 in the State to assist areas that are dependent on
16 the production of tobacco, as determined by the Gov-
17 ernor.

18 (2) AMOUNT.—The amount of a grant paid to
19 a county or other entity to assist an area shall be
20 based on—

21 (A) the ratio of gross tobacco sales receipts
22 in the area to the total farm income in the area;
23 and

24 (B) the ratio of all tobacco related receipts
25 in the area to the total income in the area.

1 (3) USE OF GRANTS.—A county or other entity
2 that receives a grant under this subsection may use
3 the grant in a manner determined appropriate by
4 the county or entity (with the approval of the State)
5 to assist producers and other persons that are eco-
6 nomically dependent on the production of tobacco,
7 including use for—

8 (A) on-farm diversification, alternatives to
9 the production of tobacco, and risk manage-
10 ment;

11 (B) off-farm activities such as education,
12 retraining, and development of non-tobacco re-
13 lated jobs; and

14 (C) assistance to tobacco warehouse own-
15 ers or operators.

16 (d) TERMINATION OF AUTHORITY.—The authority
17 provided by this section terminates September 30, 2003.

1 **Subtitle B—Tobacco Price Support**
 2 **and Production Adjustment Pro-**
 3 **grams**

4 **CHAPTER 1—TOBACCO PRICE SUPPORT**
 5 **PROGRAM**

6 **SEC. 1531. INTERIM REFORM OF TOBACCO PRICE SUPPORT**
 7 **PROGRAM.**

8 (a) PRICE SUPPORT RATES.—Section 106(f) of the
 9 Agricultural Act of 1949 (7 U.S.C. 1445(f)) is amended
 10 by adding at the end the following:

11 “(9) TOBACCO PRICE SUPPORT RATES.—Not-
 12 withstanding any other provision of this subsection,
 13 the price support rate for each kind of tobacco for
 14 which quotas were approved for the 1998 crop shall
 15 be reduced by—

16 “(A) for the 1999 crop, 25 percent from
 17 the 1998 support rate for a kind of tobacco;

18 “(B) for the 2000 crop, 10 percent from
 19 the 1999 support rate for a kind of tobacco;
 20 and

21 “(C) for the 2001 crop, 10 percent from
 22 the 2000 support rate for a kind of tobacco.”.

23 (b) NO NET COST TOBACCO FUND.—Section 106A
 24 of the Agricultural Act of 1949 (7 U.S.C. 1445–1) is
 25 amended—

1 (1) by striking “quota tobacco” each place it
2 appears and inserting “tobacco”;

3 (2) in subsection (a), by striking paragraph (7)
4 and inserting the following:

5 “(7) the term ‘tobacco’ means any kind of to-
6 bacco for which—

7 “(A) a marketing quota is in effect;

8 “(B) a marketing quota is not disapproved
9 by producers; or

10 “(C) price support is available.”;

11 (3) in the second sentence of subsection (c), by
12 striking “contributed by producer-members or”;

13 (4) in subsection (d)—

14 (A) in paragraph (1)—

15 (i) in subparagraph (A)—

16 (I) by striking clause (i);

17 (II) by redesignating clauses (ii)

18 and (iii) as clauses (i) and (ii), respec-
19 tively; and

20 (III) in clause (ii) (as so redesign-

21 nated), by striking subclause (II) and

22 inserting the following:

23 “(II) the amount of per pound

24 purchaser assessments that are pay-

25 able by domestic purchasers of Flue-

- 1 cured and Burley tobacco under
2 clause (i); and”; and
3 (ii) in subparagraph (B)—
4 (I) by striking “that, upon” and
5 all that follows through “In making”
6 and inserting “in making”; and
7 (II) in the last sentence, by strik-
8 ing “contributions and”;
9 (B) in paragraph (2)—
10 (i) by striking “producer contribution
11 or”; and
12 (ii) by striking subparagraphs (A) and
13 (B) and inserting the following:
14 “(A) from the person that acquired the to-
15 bacco involved from the producer;
16 “(B) if the tobacco involved is marketed by
17 a producer through a warehouseman or agent,
18 from the warehouseman or agent, who may add
19 an amount equal to the purchaser assessment
20 to the price paid by the purchaser;”;
21 (C) in paragraph (3), by striking “, and
22 use of” and all that follows through “of the
23 Fund”; and
24 (D) in paragraph (7), by striking “con-
25 tributions and”; and

1 (5) in subsection (h), by striking “contribution
2 or” each place it appears.

3 (c) NO NET COST TOBACCO ACCOUNT.—Section
4 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–
5 2) is amended—

6 (1) by striking “quota tobacco” each place it
7 appears and inserting “tobacco”;

8 (2) in subsection (a), by striking paragraph (5)
9 and inserting the following:

10 “(5) the term ‘tobacco’ means any kind of to-
11 bacco for which—

12 “(A) a marketing quota is in effect;

13 “(B) a marketing quota is not disapproved
14 by producers; or

15 “(C) price support is available;”;

16 (3) in subsection (c)(1), by striking “producers,
17 purchasers,” and inserting “purchasers”; and

18 (4) in subsection (d)—

19 (A) in paragraph (1)—

20 (i) by striking subparagraph (A);

21 (ii) by redesignating subparagraphs
22 (B) and (C) as subparagraphs (A) and
23 (B), respectively; and

24 (iii) in subparagraph (A) (as redesign-
25 nated), by striking “also”;

1 (B) in paragraph (2)—

2 (i) in subparagraph (A)—

3 (I) in the first sentence, by strik-
4 ing “the amount of the marketing as-
5 sessment” through “association’s area
6 and”; and

7 (II) by striking the second sen-
8 tence;

9 (ii) in subparagraph (C)(ii)—

10 (I) by striking “sum of the”;

11 (II) by striking “producer and”;

12 and

13 (III) by striking “producers
14 and”; and

15 (C) in paragraph (3)—

16 (i) by striking “(3)(A)” and all that
17 follows through the end of subparagraph
18 (B) and inserting the following:

19 “(3) COLLECTION OF ASSESSMENTS.—

20 “(A) PURCHASERS.—Except as provided in
21 subparagraphs (B) and (C), an assessment to
22 be paid by a purchaser under paragraph (1)
23 shall be collected from the person who acquired
24 the tobacco involved from the producer.

1 “(B) WAREHOUSEMAN OR AGENT.—If to-
 2 bacco of the kind for which an account is estab-
 3 lished is marketed by a producer through a
 4 warehouseman or agent, the purchaser assess-
 5 ment shall be collected from the warehouseman
 6 or agent, who may add an amount equal to the
 7 purchaser assessment to the price paid by the
 8 purchaser.”; and

9 (ii) in subparagraph (C), by striking
 10 “both the producer and”.

11 (d) ADMINISTRATIVE COSTS.—Section 1109 of the
 12 Agriculture and Food Act of 1981 (Public Law 97–98;
 13 7 U.S.C. 1445 note) is repealed.

14 (e) CROPS.—This section and the amendments made
 15 by this section shall apply with respect to the 1999
 16 through 2001 marketing years.

17 **SEC. 1532. TERMINATION OF TOBACCO PRICE SUPPORT**
 18 **PROGRAM.**

19 (a) PARITY PRICE SUPPORT.—Section 101 of the Ag-
 20 ricultural Act of 1949 (7 U.S.C. 1441) is amended—

21 (1) in the first sentence of subsection (a), by
 22 striking “tobacco (except as otherwise provided here-
 23 in), corn,” and inserting “corn”;

24 (2) by striking subsections (c), (g), (h), and (i);

25 (3) in subsection (d)(3)—

1 (A) by striking “, except tobacco,”; and

2 (B) by striking “and no price support shall
3 be made available for any crop of tobacco for
4 which marketing quotas have been disapproved
5 by producers;”; and

6 (4) by redesignating subsections (d) and (e) as
7 subsections (c) and (d), respectively.

8 (b) TERMINATION OF TOBACCO PRICE SUPPORT.—
9 Sections 106 of the Agricultural Act of 1949 (7 U.S.C.
10 1445) is amended by striking subsections (a) through (f).

11 (c) DEFINITION OF BASIC AGRICULTURAL COMMOD-
12 ITY.—Section 408(c) of the Agricultural Act of 1949 (7
13 U.S.C. 1428(c)) is amended by striking “tobacco,”.

14 (d) REVIEW OF BURLEY TOBACCO IMPORTS.—Sec-
15 tion 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

16 (e) POWERS OF COMMODITY CREDIT CORPORA-
17 TION.—Section 5 of the Commodity Credit Corporation
18 Charter Act (15 U.S.C. 714c) is amended by inserting
19 “(other than tobacco)” after “agricultural commodities”
20 each place it appears.

21 (f) TRANSITION PROVISIONS.—

22 (1) LIABILITY.—The amendments made by this
23 section shall not affect the liability of any person
24 under any provision of law as in effect before the ef-
25 fective date of this section.

1 (2) TOBACCO INVENTORIES.—The Secretary
2 shall issue regulations that require the orderly sale
3 of tobacco inventories held by associations.

4 (3) NO NET COST TOBACCO FUND.—

5 (A) IN GENERAL.—Section 106A of the
6 Agricultural Act of 1949 (7 U.S.C. 1445–1) is
7 amended by adding at the end the following:

8 “(i) ASSESSMENTS TO COVER NET LOSSES AFTER
9 2001 MARKETING YEAR.—

10 “(1) IN GENERAL.—Effective the day after the
11 last day of the 2001 marketing year for the kind of
12 tobacco involved, purchasers and importers of to-
13 bacco shall pay no net cost assessments as deter-
14 mined by an association, with the approval of Sec-
15 retary, and as provided in this subsection.

16 “(2) BASIS.—The amount of the assessment
17 shall be based on any unpaid past losses, and antici-
18 pated future losses, from sales of tobacco inventory.

19 “(3) COLLECTION.—Assessments shall be col-
20 lected as provided in subsection (d)(2).

21 “(4) PENALTY FOR FAILURE TO PAY ASSESS-
22 MENT.—Penalties for failure to pay assessments
23 shall be calculated as provided in subsection (h).

1 “(5) DURATION OF ASSESSMENTS.—Assess-
 2 ments required under this subsection shall be re-
 3 quired until—

4 “(A) all tobacco price support loans, in-
 5 cluding interest, are repaid to the Commodity
 6 Credit Corporation; and

7 “(B) the Commodity Credit Corporation
 8 has been reimbursed for all net losses sustained
 9 as a result of price support loans provided
 10 through the 2001 crop of the kind of tobacco
 11 involved.”.

12 (B) CONFORMING AMENDMENTS.—Section
 13 106A of the Agricultural Act of 1949 (7 U.S.C.
 14 1445–1) (as amended by section 1531(b)) is
 15 amended—

16 (i) in subsection (a)—

17 (I) in paragraph (5), by inserting
 18 “and” after the semicolon;

19 (II) in paragraph (6), by striking
 20 “; and” and inserting a period; and

21 (III) by striking paragraph (7);

22 (ii) by striking subsection (b);

23 (iii) in subsection (d)—

24 (I) in the last sentence of para-
 25 graph (1), by striking “the amounts

1 which the Corporation will lend to the
2 association under such agreements
3 and”;

4 (II) by striking paragraph (2)
5 and inserting the following:

6 “(2) collect the assessment due under para-
7 graph (1) by directly notifying the purchaser or im-
8 porter of the amount of the assessment and how
9 payment should be made;”; and

10 (III) in paragraph (3), by strik-
11 ing “: *Provided, That,*” and all that
12 follows and inserting “, except that,
13 notwithstanding any other provision of
14 law, the association may use amounts
15 in the Fund (including interest and
16 other earnings) for the purposes of re-
17 ducing the association’s outstanding
18 indebtedness to the Corporation asso-
19 ciated with 1982 and subsequent
20 crops of tobacco;”;

21 (iv) in subsection (e)—

22 (I) in the first sentence, by strik-
23 ing “or provide” and all that follows
24 through “the association”; and

1 (II) by striking the second sen-
2 tence; and

3 (v) in subsection (h), by striking
4 “(h)(1)(A)” and all that follows through
5 the end of subparagraph (B) and inserting
6 the following:

7 “(h) FAILURE TO PAY CONTRIBUTIONS OR ASSESS-
8 MENTS.—

9 “(1) IN GENERAL.—

10 “(A) PURCHASERS.—Each purchaser that
11 fails to pay an assessment as required by sub-
12 section (d)(2) at such time and in such manner
13 as may be prescribed by the Secretary, shall be
14 liable, in addition to any amount due, to a mar-
15 keting penalty at a rate equal to 75 percent of
16 the average market price (calculated to the
17 nearest whole cent) for the kind of tobacco in-
18 volved for the 2001 marketing year on the
19 quantity of tobacco as to which the failure oc-
20 curs.

21 “(B) IMPORTERS.—Each importer that
22 fails to pay an assessment as required by sub-
23 section (d)(2) at such time and in such manner
24 as may be prescribed by the Secretary, shall be
25 liable, in addition to any amount due, for a

1 marketing penalty at a rate equal to 75 percent
2 of the average market price (calculated to the
3 nearest whole cent) for the respective kind of
4 tobacco for the 2001 marketing year on the
5 quantity of tobacco as to which the failure oc-
6 curs.”.

7 (4) NO NET COST TOBACCO ACCOUNT.—

8 (A) IN GENERAL.—Section 106B of the
9 Agricultural Act of 1949 (7 U.S.C. 1445–2) is
10 amended by adding at the end the following:

11 “(k) ASSESSMENTS TO COVER NET LOSSES AFTER
12 2001 MARKETING YEAR.—

13 “(1) IN GENERAL.—Subject to subsection (b),
14 effective the day after the last day of the 2001 mar-
15 keting year for the kind of tobacco involved, pur-
16 chasers and importers of tobacco shall pay no net
17 cost assessments as determined by an association,
18 with the approval of Secretary, and as provided in
19 this subsection.

20 “(2) BASIS.—The amount of the assessment
21 shall be based on any unpaid past losses, and antici-
22 pated future losses, from sales of tobacco inventory.

23 “(3) COLLECTION.—Assessments shall be col-
24 lected as provided in subsection (d)(3).

1 “(4) PENALTY FOR FAILURE TO PAY ASSESS-
2 MENT.—Penalties for failure to pay assessments
3 shall be calculated as provided in subsection (j).

4 “(5) DURATION OF ASSESSMENTS.—Assess-
5 ments required under this subsection shall be re-
6 quired until—

7 “(A) all tobacco price support loans, in-
8 cluding interest, are repaid to the Commodity
9 Credit Corporation; and

10 “(B) the Commodity Credit Corporation
11 has been reimbursed for all net losses sustained
12 as a result of price support loans provided
13 through the 2001 crop of the kind of tobacco
14 involved.”.

15 (B) CONFORMING AMENDMENTS.—Section
16 106B of the Agricultural Act of 1949 (7 U.S.C.
17 1445–2) (as amended by section 1531(c)) is
18 amended—

19 (i) in subsection (a)—

20 (I) by striking paragraph (5);

21 and

22 (II) by redesignating paragraphs

23 (6) through (8) as paragraphs (5)

24 through (7), respectively;

1 (ii) by striking subsection (b) and in-
2 serting the following:

3 “(b) ESTABLISHMENT.—Notwithstanding section
4 106A, the Secretary shall, on the request of any associa-
5 tion, and may, if the Secretary determines, after consulta-
6 tion with the association, that the accumulation of the No
7 Net Cost Tobacco Fund for the association under section
8 106A is, and is likely to remain, inadequate to reimburse
9 the Corporation for net losses that the Corporation sus-
10 tains under its loan agreement with the association, estab-
11 lish and maintain in accordance with this section a No
12 Net Cost Tobacco Account for the association in lieu of
13 the No Net Cost Tobacco Fund established within the as-
14 sociation under section 106A.”;

15 (iii) in subsection (d)—

16 (I) in the third sentence of para-
17 graph (2)(A), by striking “the
18 amounts which the Corporation will
19 lend to such association under such
20 agreements and”; and

21 (II) by striking paragraph (3)
22 and inserting the following:

23 “(3) COLLECTION.—Any assessment to be paid
24 by a purchaser or importer under paragraph (1)

1 shall be collected from the purchaser or importer by
2 the Secretary.”; and

3 (iv) in subsection (j), by striking
4 “(j)(1)(A)” and all that follows through
5 the end of subparagraph (B) and inserting
6 the following:

7 “(j) FAILURE TO PAY CONTRIBUTIONS OR ASSESS-
8 MENTS.—

9 “(1) IN GENERAL.—

10 “(A) PURCHASERS.—Each purchaser that
11 fails to pay to the Secretary an assessment as
12 required by subsection (d)(3) at such time and
13 in such manner as may be prescribed by the
14 Secretary, shall be liable, in addition to any
15 amount due, to a marketing penalty at a rate
16 equal to 75 percent of the average market price
17 (calculated to the nearest whole cent) for the
18 kind of tobacco involved for the 2001 marketing
19 year on the quantity of tobacco as to which the
20 failure occurs.

21 “(B) IMPORTERS.—Each importer that
22 fails to pay to the Secretary an assessment as
23 required by subsection (d)(3) at such time and
24 in such manner as may be prescribed by the
25 Secretary, shall be liable, in addition to any

1 amount due, for a marketing penalty at a rate
2 equal to 75 percent of the average market price
3 (calculated to the nearest whole cent) for the
4 respective kind of tobacco for the 2001 market-
5 ing year on the quantity of tobacco as to which
6 the failure occurs.”.

7 (g) NET GAINS HELD BY COMMODITY CREDIT COR-
8 PORATION.—The Secretary shall ensure that the net gains
9 in the No Net Cost Tobacco Account of the Commodity
10 Credit Corporation as of September 30, 2002, equal or
11 exceed the balance in the Account that existed on Septem-
12 ber 30, 1998.

13 (h) CROPS.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), this section and the amendments made by
16 this section shall apply the day after the last day of
17 the 2001 marketing year for the kind of tobacco in-
18 volved.

19 (2) NET LOSSES TO THE COMMODITY CREDIT
20 CORPORATION.—Sections 106A and 106B of the Ag-
21 ricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2)
22 are repealed effective on the date on which the Sec-
23 retary—

24 (A) determines that—

1 (i) all tobacco price support loans,
 2 plus interest, have been repaid by associa-
 3 tions; and

4 (ii) the Commodity Credit Corporation
 5 has been reimbursed for all net losses sus-
 6 tained as a result of price support loans
 7 provided through the 2001 crop of the
 8 kind of tobacco involved; and

9 (B) publishes a notice of the determination
 10 in the Federal Register.

11 **CHAPTER 2—TOBACCO PRODUCTION**

12 **ADJUSTMENT PROGRAMS**

13 **SEC. 1541. TERMINATION OF TOBACCO PRODUCTION AD-** 14 **JUSTMENT PROGRAMS.**

15 (a) DECLARATION OF POLICY.—Section 2 of the Ag-
 16 ricultural Adjustment Act of 1938 (7 U.S.C. 1282) is
 17 amended by striking “tobacco,”.

18 (b) DEFINITIONS.—Section 301(b) of the Agricul-
 19 tural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is
 20 amended—

21 (1) in paragraph (3)—

22 (A) by striking subparagraph (C); and

23 (B) by redesignating subparagraph (D) as
 24 subparagraph (C);

25 (2) in paragraph (6)(A), by striking “tobacco,”;

1 (3) in paragraph (7), by striking the following:

2 “tobacco (flue-cured), July 1—June 30;

3 “tobacco (other than flue-cured), October

4 1–September 30;”;

5 (4) in paragraph (10)—

6 (A) by striking subparagraph (B); and

7 (B) by redesignating subparagraph (C) as
8 subparagraph (B);

9 (5) in paragraph (11)(B), by striking “and to-
10 bacco”;

11 (6) in paragraph (12), by striking “tobacco,”;

12 (7) in paragraph (14)—

13 (A) in subparagraph (A), by striking
14 “(A)”; and

15 (B) by striking subparagraphs (B), (C),
16 and (D);

17 (8) by striking paragraph (15);

18 (9) in paragraph (16)—

19 (A) by striking subparagraph (B); and

20 (B) by redesignating subparagraph (C) as
21 subparagraph (B); and

22 (10) by redesignating paragraphs (16) and (17)
23 as paragraphs (15) and (16), respectively.

24 (c) PARITY PAYMENTS.—Section 303 of the Agricul-
25 tural Adjustment Act of 1938 (7 U.S.C. 1303) is amended

1 in the first sentence by striking “rice, or tobacco,” and
2 inserting “or rice,”.

3 (d) MARKETING QUOTAS.—Part I of subtitle B of
4 title III of the Agricultural Adjustment Act of 1938 (7
5 U.S.C. 1311 et seq.) is repealed.

6 (e) ADMINISTRATIVE PROVISIONS.—Section 361 of
7 the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361)
8 is amended by striking “tobacco,”.

9 (f) ADJUSTMENT OF QUOTAS.—Section 371 of the
10 Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is
11 amended—

12 (1) in the first sentence of subsection (a), by
13 striking “peanuts, or tobacco” and inserting “or
14 peanuts”; and

15 (2) in the first sentence of subsection (b), by
16 striking “peanuts or tobacco” and inserting “or pea-
17 nuts”.

18 (g) REPORTS AND RECORDS.—Section 373 of the Ag-
19 ricultural Adjustment Act of 1938 (7 U.S.C. 1373) is
20 amended—

21 (1) by striking “peanuts, or tobacco” each place
22 it appears in subsections (a) and (b) and inserting
23 “or peanuts”; and

24 (2) in subsection (a)—

1 (A) in the first sentence, by striking “all
2 persons engaged in the business of redrying,
3 prizing, or stemming tobacco for producers,”;
4 and

5 (B) in the last sentence, by striking
6 “\$500;” and all that follows through the period
7 at the end of the sentence and inserting
8 “\$500.”.

9 (h) REGULATIONS.—Section 375(a) of the Agricul-
10 tural Adjustment Act of 1938 (7 U.S.C. 1375(a)) is
11 amended by striking “peanuts, or tobacco” and inserting
12 “or peanuts”.

13 (i) EMINENT DOMAIN.—Section 378 of the Agricul-
14 tural Adjustment Act of 1938 (7 U.S.C. 1378) is amend-
15 ed—

16 (1) in the first sentence of subsection (c), by
17 striking “cotton, tobacco, and peanuts” and insert-
18 ing “cotton and peanuts”; and

19 (2) by striking subsections (d), (e), and (f).

20 (j) BURLEY TOBACCO FARM RECONSTITUTION.—
21 Section 379 of the Agricultural Adjustment Act of 1938
22 (7 U.S.C. 1379) is amended—

23 (1) in subsection (a)—

24 (A) by striking “(a)”; and

1 (B) in paragraph (6), by striking “, but
2 this clause (6) shall not be applicable in the
3 case of burley tobacco”; and
4 (2) by striking subsections (b) and (c).

5 (k) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the
6 Act entitled “An Act to amend the Agricultural Adjust-
7 ment Act of 1938, as amended, to provide for acreage-
8 poundage marketing quotas for tobacco, to amend the to-
9 bacco price support provisions of the Agricultural Act of
10 1949, as amended, and for other purposes”, approved
11 April 16, 1965 (Public Law 89–12; 7 U.S.C. 1314c note),
12 is repealed.

13 (l) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The
14 Act entitled “An Act relating to burley tobacco farm acre-
15 age allotments under the Agricultural Adjustment Act of
16 1938, as amended”, approved July 12, 1952 (7 U.S.C.
17 1315), is repealed.

18 (m) TRANSFER OF ALLOTMENTS.—Section 703 of
19 the Food and Agriculture Act of 1965 (7 U.S.C. 1316)
20 is repealed.

21 (n) ADVANCE RECOURSE LOANS.—Section
22 13(a)(2)(B) of the Food Security Improvements Act of
23 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking
24 “tobacco and”.

1 (o) TOBACCO FIELD MEASUREMENT.—Section 1112
2 of the Omnibus Budget Reconciliation Act of 1987 (Public
3 Law 100–203) is amended by striking subsection (c).

4 (p) LIABILITY.—The amendments made by this sec-
5 tion shall not affect the liability of any person under any
6 provision of law as in effect before the effective date under
7 subsection (q).

8 (q) CROPS.—This section and the amendments made
9 by this section shall apply with respect to the 1999 and
10 subsequent crops of the kind of tobacco involved.

11 **Subtitle C—Funding**

12 **SEC. 1551. TRUST FUND.**

13 (a) REQUEST.—The Secretary of Agriculture shall
14 request the Secretary of the Treasury to transfer from the
15 Trust Fund amounts authorized under sections 1514,
16 1515, and 1521 to the account of the Commodity Credit
17 Corporation.

18 (b) TRANSFER.—On receipt of such a request, the
19 Secretary of the Treasury shall transfer amounts re-
20 quested under subsection (a).

21 (c) USE.—The Secretary of Agriculture shall use the
22 amounts transferred under subsection (b) to carry out the
23 activities described in subsection (a).

1 (d) TERMINATION OF AUTHORITY.—The authority
2 provided under this section shall expire on September 30,
3 2003.

4 **SEC. 1552. TOBACCO RELATED ADMINISTRATIVE COSTS**
5 **AND SUBSIDIES.**

6 (a) IN GENERAL.—The Secretary shall provide, by
7 regulation, for a nonrefundable marketing assessment
8 paid by purchasers of tobacco during each of the 1999
9 through 2024 fiscal years.

10 (b) BASIS.—The assessment shall be—

11 (1) on a per pound basis, as determined by the
12 Secretary; and

13 (2) based on estimated annual costs to the Fed-
14 eral Government of tobacco related administrative
15 costs and subsidies in accordance with this section.

16 (c) AGGREGATE ASSESSMENT AMOUNT.—For each
17 fiscal year, the Secretary shall estimate the costs to the
18 Federal Government relating to tobacco that involve—

19 (1) agricultural extension;

20 (2) handling, sampling, grading, inspecting, and
21 weighing;

22 (3) administering and providing subsidies for
23 crop insurance; and

1 (4) administering the tobacco price support pro-
2 gram for each of the 1999 through 2001 fiscal
3 years.

4 (d) ASSESSMENT AMOUNT FOR EACH KIND OF TO-
5 BACCO.—For each fiscal year, the Secretary shall deter-
6 mine the amount of the total costs determined under sub-
7 section (c) that benefit each kind of tobacco.

8 (e) ESTIMATED MARKETINGS.—For each fiscal year,
9 the Secretary shall estimate the pounds marketed during
10 the fiscal year for each kind of tobacco.

11 (f) ASSESSMENT RATE.—For each kind of tobacco
12 for each fiscal year, the Secretary shall calculate an as-
13 sessment rate per pound by dividing—

14 (1) the amount determined under subsection
15 (d); by

16 (2) the estimated pounds marketed as esti-
17 mated under (e).

18 (g) REMITTANCE BY PURCHASER.—For each fiscal
19 year, each purchaser of tobacco shall remit to the Com-
20 modity Credit Corporation a nonrefundable marketing as-
21 sessment equal to the amount obtained by multiplying—

22 (1) the assessment rate for the kind of tobacco
23 purchased; by

24 (2) the number of pounds of the kind of tobacco
25 purchased.

1 (h) PENALTIES.—If any purchaser fails to remit the
 2 assessment required by this section or fails to comply with
 3 such requirements for recordkeeping as are established by
 4 the Secretary to carry out this section, the purchaser shall
 5 be liable to the Secretary for a civil penalty in an amount
 6 determined by the Secretary that does not exceed the
 7 amount obtained by multiplying—

8 (1) the quantity of the kind of tobacco involved
 9 in the violation; by

10 (2) the assessment rate for the kind of tobacco.

11 (i) ENFORCEMENT.—The Secretary may enforce this
 12 section in the courts of the United States.

13 **SEC. 1553. COMMODITY CREDIT CORPORATION.**

14 The Secretary may use the funds, facilities, and au-
 15 thorities of the Commodity Credit Corporation to carry
 16 out this title and the amendments made by this title.

17 **Subtitle D—Miscellaneous**

18 **SEC. 1561. LIABILITY FOR OBLIGATIONS OF TOBACCO**

19 **PRODUCT MANUFACTURERS.**

20 A person that owns or produces tobacco, or owns or
 21 operates a tobacco warehouse, shall not be liable for—

22 (1) any action or legal penalty or obligation of
 23 a manufacturer of a tobacco product under this Act;
 24 or

1 (2) any financial penalty or payment owed by a
2 manufacturer of a tobacco product under this Act.

3 **SEC. 1562. FDA REGULATION OF TOBACCO PRODUCTION**
4 **AND FARMS.**

5 Notwithstanding any other provision of law, an offi-
6 cer, employee, or agent of the Food and Drug Administra-
7 tion shall not—

8 (1) regulate the production of a crop of tobacco
9 by a person; or

10 (2) enter the farm of a person that owns or
11 produces tobacco without the consent of the person.